CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 16/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. A/ 70069-70071/2016 dated 19/01/2016</u>

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/53578/2014 E/54113-54114/2014	MET TRADE INDIA LTD VILAGE- CHITHERA,G.T.ROAD, DADRI, GAUTAM BUDH NAGAR(UP) METENERE LTD VILLAGE- BHEEL AKBARPUR G T ROAD, DADRI GAUTAM BUDH NAGAR-UP

Name and Address of Respondent	CCE, GHAZIABAD CGO COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD

Other Appellants and Respondents as per Annexure

Copy To

3<u>Advocate(s) / Consultant(s</u> RAJESH CHIBER,ADV
FA-9,KAVI NAGAR
GHAZIABAD

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxindiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/order: 19.01.2016

Excise Appeal No. E/53578/2014-EX[DB],E/54113-14/2014 EX

[Arising out of the Order-in-Original No. 27-28/Commr./GZB/2013-14 Dated-21 & 23/04/2014 and 01/Tech/GZB/2014 Dated-25/03/2014 passed by the Commissioner of Customs & Central Excise, Ghaziabad]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?
	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
	Whether their Lordships wish to see the fair copy of the Order?
	Whether Order is to be circulated to the Departmental authorities?

1)M/s. Met Trade India Ltd.
2)Metenere Ltd.

..Appellant

Vs.

Commissioner of Central Excise & Service Tax, Ghaziabad

.... Respondent

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Appearance:

Shri Rajesh Chibber (Advocate)

for the appellant

Shri Rajeev Ranjan (Joint Commr.),A.R.

for the Respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Final Order No. 70069-70071/2016

Per: Mr. Mr. H.K. Thakur

The appellant M/s. Met Trade India Ltd. (MTIL), presently known as Metenere Ltd., has filed these appeals against Order-in-Original No. 27-28/Commr./GZB/2013-14 Dated-21 & 23/04/2014 and 01/Tech/GZB/2014 Dated-25/03/2014, passed by Commissioner of C.E. & Service Tax, Ghaziabad under which adjudicating authority has rejected the request of M/s. MTIL for allowing a single registration to appellant's two manufacturing premises situated across the road. The appellant was manufacturing lead ingots in their premises (Unit-I) and sending to the premises of M/s. Gupta Pigments and Chemicals Pvt. Ltd. Which was later taken over by the appellant as Unit-II. During the relevant period, the appellant MTIL (Unit-I) was sending lead ingots to Unit-II for the manufacture of Lead Oxide and was receiving back the same and clearing

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on payment of Central Excise duty from Unit –I of the appellant. After acquiring Unit-II, appellant requested the Department for granting a common registration which was rejected by the adjudicating authority in the year 2008. The order passed by the Adjudicating authority was agitated by the appellant before CESTAT and Tribunal remanded the matter back to the adjudicating authority for remand proceedings regarding common registration denied to the appellant. In the remand proceedings, the adjudicating authority has again rejected the request of the appellant under Order-in-Original dated 25/03/2014 against which the present appeal No. E/53578/2014 has been filed.

2. The other two appeals filed by the appellant are with respect to confirmation of demands against the appellant on the ground that duty was required to be paid by the appellant while sending lead ingots to Unit-II.

3. Shri Rajesh Chibber, Advocate appearing on behalf of the appellant argued that common registration cannot be denied to the appellant in view of the following case laws :

(i) Escorts Ltd. Vs. Commissioner of Central Excise, Delhi [2011 (273) ELT 415 (Tri-Delhi)]

(ii) Rajhans Pressings Pvt. Ltd. Vs. Commissioner of Central Excise, Delhi-IV [2011 (271) ELT 283 (Tri.-Del.)]

(iii) Balrampur Chini Millsw Ltd. Vs. Commissioner of Central Excise, Allahabad [2002 (149) ELT 286 (Tri.-Del.)]

3.1 Ld. Advocate made the Bench go through para 7.2 of the case law of Escorts Ltd. Vs. Commissioner of Central Excise, Delhi (supra) to argue that if the processes of manufacture are inter-linked then a common registration is required to be given when appellant is having common sales tax registration, filing common Income tax return and common administration/work management. It was thus his case that adjudicating authority has wrongly denied common registration. Ld. Advocate also made the Bench go through para 10 of the case law of Rajhans Processing Pvt. Ltd. Vs. Commissioner of Central Excise-Delhi,IV (supra)under which CESTAT Delhi has held that giving a common registration in such situations will not effect the Revenue's interest but only saves some work in maintaining separate records and filing separate returns.

3.2 So far as confirmation of demand of duty against the appellant is concerned, Ld. Advocate argued that once common registration is allowed to the appellant, then the demands will not be sustainable as both Unit I and II of the appellant will be treated as one manufacturing factory. It was also his case that even if unit No. I is made to pay Central Excise duty the same will be admissible as CENVAT Credit to Unit II and the entire exercise will be Revenue neutral. Ld. Advocate relied upon the following case laws in support of his argument that Revenue neutrality itself has been held to be reason for allowing appeals and accordingly appeals filed by the appellant are required to be allowed.

(i) PTC Industries Ltd. vs. Commr. of C.E., JAIPUR-I- 2003 (159) ELT 1046 (Tri.-Del.)

(ii) Commr. of C. Ex. & Customs, Vadodara-II Vs. Indeos ABS Ltd. – 2010 (254) ELT 628 (Guj.)

(iii) Commr. of C. Ex., Raigad Vs. Castrol India Ltd. - 2007 (210) ELT 374 (Tri.-Mumbai)

3.3 Ld. Advocate also made a point that appellant was taking CENVAT Credit on the inputs received in Unit-I. He made the Bench go through para 4.1 (ii) of Order-in-Original dated 23/4/14 under which adjudicating authority has clearly noted the fact stated by the appellant that Unit-I was taking CENVAT Credit. It was thus the case of the appellant that it has been wrongly observed by the adjudicating authority in para 6.5 of the Order-in-Original dated- 23/4/14 that appellant was not taking any CENVAT Credit and that Rule 4 (5) (a) Of the CENVAT Credit Rules, 2004 (CENVAT Credit Rules) is not applicable to the appellant.

4. Shri Rajeev Ranjan, Jt. Commissioner (A.R.) appearing on behalf of the Revenue argued that as per Notification No. 36/2001-CE Issued under Rule 9 (2) of the Central Excise Rules,2002 common registration can be given if the process of manufacture of both the units is Inter linked. That in the present case, Unit-I of the appellant should also further utilise the manufactured product after receipt from Unit-I. It

was also his case that both the finished products manufactured in Unit-I and Unit-II are different and marketable, therefore, request for common registration has been correctly denied. Regarding duty demands against the appellant, Ld. A.R. reiterated the findings of the adjudicating authority given in para 6.5 of order-in-Original dated 23/4/2014.

5. Heard both sides and perused the case records. The issues involved in the present proceedings are as follows:

(i) Whether appellant are eligible to a common Central Excise registration for their two units situated across a road?

(ii) Whether appellant appellant was required to discharge duty on Lead Ingot manufactured in Unit-I when sent to its Unit-II across the road?

6. So far issue of common registration in concerned appellant's request has been rejected by the Adjudicating authority on the grounds that both the units are functioning in an independent manner and are manufacturing different products and has no interlinkage of manufacturing activity. That the raw materials of both the units are also different. It is also the finding of the adjudicating authority that CBEC instruction facilitate single registration for a factory which has been splitted into more than one premises and that it nowhere suggest that two different factories should be treated as a single factory. On the issue of grant of single registration it is observed from the case records that appellant's Unit-I is manufacturing lead ingots and send the same to its Units-II across the road for manufacturing lead oxide. CBEC under para

3.2 of Chapter 2 of Central Excise Manual for supplementary Instructions has prescribed as follows:

> "Separate registration is required in respect of separate "3.2 premises except in cases where two or more premises are actually part of the same factory (where processes are interlined), but are segregated by public road, canal or railway line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as :
>
> (1) Interlinked process product manufactured/produced in one premises are substantially used in other premises for manufacture of final products.
> (2) Large number of raw materials are common and received/proposed to be received commonly for both/all the premises.
> (3) Common electricity supplies.
> (4) There is common labour/work force.
> (5) Common administration/work management.
> (6) Common sales tax registration and assessment
> (7) Common Income Tax assessment.
>
> This is niot an exhaustive list of indicators nor is each indicator necessary in each case. The Commissioner has to decide the issue case by case.

6.1 In the case of Rajhans Pressings Pvt. Ltd. Vs. Commissioner of Central Excise, Delhi-IV (SUPRA) CESTAT, Delhi held as follows in para 10.

> "The moulds and dies manufactured at premises-II is required for manufacturing activity at premises-I and such goods are being used in premises-I and not for sale to any independent buyers. So the observatiobn of the Commissioner that the manufacturing processes at the two plots are not interconnected is wrong. Further, there is no condition that such registration can be given only if the products manufactured in one of the factories is not final products but only intermediate products. In fact what is Intermediate product and what is final product depends on the manufacturing facilities of

individual manufacturers and there is no clear rule to define such products. What is final product for one factory is quite often starting point for another factory. Taking the present case itself, the manufacturer may place order on another manufacturer to make tools and dies needed by him or make it himself. In the present case the appellant has opted for the latter option and there is no provision in excise rules to discourage such activity. If a common registration is given the appellant does not save any incidence of taxation but only sav3es some work of maintaining separate records and filing separate returns".

6.2 In view of the above settled position finished product of Unit-I of the appellant is the starting point of manufacturing in Unit-II. It cannot be said that processes of both the units-I & II of the appellant are not inter connected especially when appellant has a common sales tax registration, files common income tax returns etc. Accordingly, appellant has a case for common Central Excise registration and adjudicating authority has not interpreted the procedutre in its right spirit when some procedural accommodation is prescribed and there is no risk to the Revenue. Appeal filed by the appellant to that extent is required to be allowed by setting aside Order-in-Original No. 1/Tech./GZB/2014 dated 25/3/14.

7. Regarding chargeability of duty mentioned at para 5 (ii) it is observed that once appellant's appeal on common registration is admissible then both the units are treated as one assessee and no duty

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on intermediate stages are required to be paid when duty is paid on the end products.

7.1 It is also the case of the appellant that even if both the units are taken separately then also duty is not payable by virtue of Rule 4 (5) (a) of CENVAT Credit Rules. It is observed from the case records that Adjudicating authority has held that Rule 4 (5) (a) of the CENVAT Credit Rules is not applicable as appellant's Unit-I is not taking CENVAT Credit. It is observed that Adjudicating authority in para 4.1 (ii) of the Order-in-Original dated 23/4/2014 has clearly noted the fact stated by the appellant that CENVAT Credit is taken by Unit-I of the appellant. There is nothing on record as to how adjudicating authority has arrived at the conclusion that appellant's unit-I has not taken CENVAT Credit. In the absence of any such evidence, no duty was required to be paid by the appellant on the goods got manufactured from Unit-II as 'job worker' under Rule 4 (5) (a) of CENVAT Credit Rules even if the units were separate and entire goods and transfer was recorded in appellants books of accounts. 'Job worker' as defined in Rule 2 (n) of the CENVAT Credit Rules is as follows :

> "(n) "Job work' means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly"

7.2 Appellants has also contended that the entire exercise is revenue neutral in view of the relied upon case laws. This argument of the appellant has also some force as the duty paid by Unit-I of the appellant would have been eligible established as CENVAT Credit to Unit-II of the appellant.

7. In view of the above observations all the appeals filed by the appellant are allowed.

(Operative part of the order already pronounced in the open Court)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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17.2.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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