FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 10/01/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70138/2018-EX[DB] dated 05/01/2018

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 |
|---|---|---|---|
| 1 | E/CROSS/5293/2012 | E/2799/2012 | **Commissioner of Central Excise and Service Tax-Lucknow**<br>7-A...ASHOK MARG,<br>LUCKNOW,<br>UTTAR PRADESH<br>226001 |
| | | | Name and Address of Respondent |
| 2 | | | Rekon Extrusion Pvt Ltd<br>G T Road, Chaudagra,<br>Fatehpur.(U.P) |

Copy To

3 Bar Association, CESTAT, Allahabad

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

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
CROSS Application No. E/CROSS/5293/2012
APPEAL No. E/2799/2012-EX[DB]

(Arising out of Order-in-Appeal No. 252-CE/LKO/2012 dated 30/05/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

**Commissioner of Central Excise & Service Tax, Lucknow** **Appellant**

Vs.

**M/s Rekon Extrusion Pvt. Ltd.** **Respondent**

Appearance:

Shri Pawan Kumar Singh (Supdt.) AR for Appellant
Absent on call for Respondent

CORAM:

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 05/01/2018
Date of Decision : 05/01/2018

FINAL ORDER NO-70138/2018

**Per: Archana Wadhwa**

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri Pawan Kumar Singh (Supdt.) A.R., appearing for the Revenue. Nobody appear for the respondents.

2. As per the facts on record the respondent is engaged in the manufacture of PVC Pipes in their factory located at Fatehpur, and were availing benefit of small scale exemption

Notification, during the period relevant for the purposes of present appeal.

3. Revenue found that another factory located at district Hamirpur engaged in manufacture of ingots has the same Directors as the present assessee. Inasmuch as the clearances at Hamirpur unit were more than the clearances entitled to exemption in terms of SSI Notification, they were not availing such exemptions. By clubbing clearances of both the units, Revenue entertained a view that the Fatehpur unit would also not be entitled to SSI exemptions during the period 2001-02 to 2002-06.

4. Accordingly proceedings were initiated against them by way of a show cause notice dated 06/10/2006 proposing to deny the benefit of the small scale exemption Notification and, to confirm the demand to the extent of Rs.40,80,114/-. The said show cause notice resulted in an order passed by the Original Adjudicating Authority confirming the demand along with confirmation of interest and imposing penalties.

5. On appeal Commissioner (Appeals) observed that both the units are distinct and separate, though they were having common Directors. As such by referring to the Board Circular No.6/92 dated 29/05/1992 as also various precedent decisions of the Tribunal he held in favour of the assessee. Hence the present appeal by the Revenue.

6. For better appreciation of the reasoning adopted by Commissioner (Appeals), we reproduce the relevant Paragraph:-

*"I find that Notification No.9/2001-CE dated 01/03/2001 (or any subsequent Notification for that matter) has clearly mentioned at Sl. No. 2 (iv) 'the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, does not exceed rupees three hundred lakhs (four hundred lakhs w.e.f. 01/04/2005) in the preceding Financial Year.' In the instant case, the appellants are a limited company at Fatehpur having more company at Hamirpur. I find that the Board had already clarified vide Circular No.6/92, dated 29/05/1992, F. No. 213/15/1992-CX. 6* ***'Limited companies whether public or private are separate entities distinct from shareholders composing it. Hence each limited company is a manufacturer by itself and will be entitled to a separate exemption limit.'*** *The Hon'ble Tribunal in the case of Unicure Remedies Pvt. Ltd. Vs. CCE, Vadodara-I reported in 2005 (185) E.L.T. 257 (Tri.-Del.) has held SSI Exemption – Value of clearances – Clubbing of – Benefit of* ***SSI exemption denied on the ground that two Directors or two private limited companies are common – No evidence produced to show the Financial Year back – C.B.E. & C. Circular No. 6/92, dated 29/05/1992 clarifies***

***that benefit of SSI exemption Notification is available to each limited company as each limited company is a manufacturer by itself – Such two companies are not related persons – SSI exemption not deniable.*** *In the case of Padma Packages (P) Ltd. vs. Coll. Of CE, Coimbatore reported in 1997 (90) E.L.T. 175 (Tribunal) the Hon'ble Tribunal has held SSI Exemption – Value of clearances – Clubbing of –* ***Common directors being related to each other in limited companies which are separate legal entities not significant for clubbing the value of clearances.*** *The Hon'ble Supreme Court in the case of M/s Alembic Glass Industries Ltd. Vs. CCE [2002 (143) E.L.T. 244 (SC)] held that* ***the fact that two public limited companies have common Directors does not mean that the one company has an interest in the business of the other.*** *Hence, in the light of above, I am of the opinion that both the units at Fatehpur and Hamirpur, are to be treated separate entities, and value of clearance is not to be clubbed.*

*Further, I also observe that both the companies are engaged in the manufacture of different products i.e. PVC Pipes manufactured at Fatehpur and M.S. Ingots manufactured at Hamirpur. Both the units were having a separate registration certificate under Factories Act, 1948 and Central Excise Act, 1994 and obtained a separate ISO 9001: 2000 certificates for manufacture & supply of standard quality of products. Thus, I* *am of the view that though both the companies having common income tax registration, common name & style and common directors, but the same are operated independently by separate staff, separate management and separate certificates obtained by different Statutory Authorities. As such, both the companies are distinct from each other and not to be treated as one company/manufacturer. The Hon'ble Supreme Court in the case of Rollatainers Ltd. Vs. CCE, Delhi-III reported in 2004 (170) E.L.T. 257 (S.C.) has clarified the situation that when the two factories can be treated as a separate factory for availing exemption. The Hon'ble Apex Court has held* ***Factory – Clubbing of – Two factories within same premises, same owner and common balance sheet with common boundaries but having separate staff, separate management, separate passage, separate entrance with separate Central Excise Registration and producing different end products, such factories not treatable as one and the same factory, hence are two factories separately eligible to exemption."***

7. As is seen from above, the impugned order has taken into consideration the precedent decisions of the Higher Courts and has held that both the units are registered separately under various authorities and being limited companies have to be held as separate units and entitled to the benefit of small scale Notification separately.

8. Revenue in their memo of appeal have not advanced any reasons so as to interfere in the impugned order of Commissioner (Appeals), which is based upon the Board's own clarification as also on the decision of the various authorities. We find no infirmity in the impugned order of Commissioner (Appeals). Accordingly the Revenue's appeal is rejected.

(Dictated & Pronounced in Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Lks

प्रमाणित प्रति/Certified True Copy
12/02/18

35, M. G. MARG, ALLAHABAD-211001