

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL****REGIONAL BENCH AT CHANDIGARH****COURT NO.I****Appeal No.E/1439/2007-Ex (DB)**

(Arising out of OIA No.7 to 11/CE/Apl/DLH-IV/2007 dt.26.2.2007 passed by the Commissioner (Appeals), Central Excise New CGO Complex, NH-IV, Faridabad-121001)

**M/s. Hind Hydraulic Engg.****Appellant**

( Plot No.13, Sector 24, NIT Faridabad)

**Vs.****Commissioner of Central Excise, Delhi-IV****Respondent**

(New CGO Complex NH-4, Faridabad)

**WITH****Appeal No.E/1440/2007-Ex (DB)**

(Arising out of OIA No.7 to 11/CE/Apl/DLH-IV/2007 dt.26.2.2007 passed by the Commissioner (Appeals), Central Excise New CGO Complex, NH-IV, Faridabad-121001)

**M/s. Hind General Industry,****Appellant**

( Plot No.13, Sector 24, NIT Faridabad)

**Vs.****Commissioner of Central Excise, Delhi-IV****Respondent**

(New CGO Complex NH-4, Faridabad)

**AND****Appeal No.E/1441-1443/2007-Ex (DB)**

(Arising out of OIA No.7 to 11/CE/Apl/DLH-IV/2007 dt.26.2.2007 passed by the Commissioner (Appeals), Central Excise New CGO Complex, NH-IV, Faridabad-121001)

**M/s. Primax International****Shri Sukhdev Singh****Shri Sucha Singh, Partner,****Appellant**

( Plot No.13, Sector 24, NIT Faridabad)

**Vs.****Commissioner of Central Excise, Delhi-IV****Respondent**

(New CGO Complex NH-4, Faridabad)

Present for the Appellant: Shri R.K.Hasija, Advocate

Present for the Respondent: Shri Harvinder Singh, AR

**Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)****Hon'ble Mr.C.L.Mahar, Member (Technical)**

**FINAL ORDER No.60730-60734/2019**

Date of hearing: 03.04.2019

Date of Decision: 02.08.2019

**PER.AHSOK JINDAL**

The appellants are in appeal against the impugned order which is reproduced as under:-

1. I confirm the demand of Rs.6,87,307/- (Rupees Six Lacs, Eighty Seven Thousand, three hundred and seven only) under Section 11A of Central Excise Act, 1944 against M/s. Hind Hydraulics Engg. (Now M/s.Hind Fluid Pvt.Ltd.), plot No.13, Sector24, Faridabad. The same shall be paid with interest at applicable rates.
2. I impose a penalty of Rs.4,00,000/- (Rupees four lac only) against Sh.Sucha Singh, Director of M/s. Hind Fluid Pvt.Ltd. under Rule 209A of erstwhile Central Excise Rules 2001 read with Section 38A of the Central Excise Act, 1944.
3. I impose a penalty of Rs.6,87,307/- (Rupees Six Lacs, Eighty Seven Thousand, three hundred and seven only) against M/s. Primax International, plot No.13, Sector24, Faridabad under Rule 173Q of erstwhile Central Excise Rules 1944 read with Section 38A of the Central Excise Act, 1944.
4. I impose a penalty of Rs.19,200/- (Rupees Nineteen thousand and two hundred only) against M/s. Hind General Industry, Plot No.13, Sector 24, Faridabad under Rule 173Q of erstwhile Central Excise Rules 1944 read with Section 38A of the Central Excise Act, 1944.
5. I also a penalty of Rs.2,00,000/- (Rupees two lack only) against Sh.Sukhdev Singh, Partner of M/s. Primax International under Rule 209A of erstwhile Central Excise Rules 1944."

2. The facts of the case are that an investigation was conducted at the premises of M/s. Hind Hydraulics Engineering, the unit No.I is private limited company, M/s. Primax International is a partnership concern (unit No.II) and M/s Hind General Industries (unit No.III) is a

partnership concern. As all these units are owned by a family consisting of father, Shri Buta Singh, three sons S/Shri Sucha Singh, Sukhdev Singh and Mohan Singh and their wives. Therefore, on the basis of an investigation, it was alleged that unit No.II and III have no manufacturing facility to manufacture the goods and all the machines in question were manufactured by unit No.1. The said machines were cleared on the invoices of the unit No.II and III by unit No.I to avail the benefit of SSI exemption notification. Therefore, the proceedings were initiated against them. The duty was sought to be demanded from unit No.I under Rule 173Q of erstwhile Central Excise Rules, 1944 read with Section 11A of Central Excise Act, 1944 and penalty was also imposed under Rule 209A of erstwhile Central Excise Rules, 1944. The penalty was also sought to be imposed on unit No.II and III under Rule 173Q of erstwhile Central Excise Rules, 1944 for violation of Rule 174 of Central Excise Rules, 1944. The penalty was also sought to be imposed on Shri Sucha Singh, Director and Shri Sukhdev Singh, Partner under Rule 209A erstwhile Central Excise Rules, 2001. It was held by the authority below that the machines in question were not manufactured by unit No.II and III but were manufactured by unit No.I which were cleared clandestinely by unit No.II and III to evade the payment of duty. It was also held by the authority below that there was mutuality of interest among the three units as they were owned by same family members. It was further held that the units were situated in the same plot and were inter-connected with each other. There was regular cash flow back among the units in the shape of interest free unsecured loan without having any commercial transaction. Therefore, unit No.I was liable to

duty along with interest and penalty on all the appellants were imposed. Against the said order, the appellants are before us.

3. Ld. Counsel for the appellants submits that the family members have entered into manufacture of machines through different business entities, namely, M/s. Hind Hydraulics Engg. Pvt. Ltd., unit No.I, M/s.Primax International, unit No.II and M/s. Hind General Industries, unit No.III. The constitution of family members is as under:-

| Name of the unit                         | Partners/Director                                                                                                                         |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Hind Hydraulic Engg.Pvt.Ltd.<br>(unit I) | (i)Shri Buta Singh, (ii) Sh. Sucha Singh, (iii) Sh. Sukhdev Singh and (iv) Mohan Singh [father and 3 sons)                                |
| Primax International (unit II)           | (i)Shri Sukhdev Singh, (ii) Sh.Mohan Singh and (iii) Smt. Balbir Kaur, (iv) Smt.Jaswant Kaur [W/o Sh.Buta Singh and W/o Shri Sucha Singh] |
| Hindi General Industries (Unit III)      | (i)Shri Buta Singh, (ii) Sucha Singh, (iii) Smt.Harpreet Kaur & (iv) Smt.Jyoti Singh [W/o Mohan Singh and W/o of Sukhdev Singh]           |

4. Unit No.I was registered unit and unit No.II and III were not registered with the Central Excise department. The show cause notice alleged that unit No.II and III have no manufacturing facility to

manufacture the machines in question. Therefore, the same has been manufactured by unit No.I. Therefore, the duty was demanded from unit No.I and penalties were also imposed on unit No.II and III. The show cause cannot be issued to imposed penalty under Rule 173Q as the show cause notice has not mentioned under which clause of Rule 173Q has been violated, therefore, no penalty can be imposed on the appellants as held by the Hon'ble Supreme Court in the case of Amrit Foods vs. CCE-2005 (190) ELT 433 (SC).

5. He further submits that during the course of investigation, the statement of Shri Sukhdev Singh was recorded. But mandatory procedure under section 9D has not been followed. Therefore, the said statement cannot be relied upon.

6. He further submits that it was alleged in the show cause notice that all units are family concerns, this cannot be the ground to allege that they were involved in the evasion of duty.

7. It is his submission that unit No.I is private limited company and therefore, the director and private limited company are separate entities. Therefore, it cannot be said that these are family concerns as held by this Tribunal in the case of Devilal Kutir Soap vs. CCE, Jaipur-II-2016 (340) ELT 258. He has also relied upon the decision of this Tribunal in the case of Sushil Chemical-2008 (230) ELT 117.

8. He further submits that it has been alleged in the show cause notice that there was financial flow back of interest free loan of each other, therefore, the same cannot be the ground to club the clearance of all the units as held by this Tribunal in the case of Alpha Toyo

Limited-1994 (71) ELT 689. He has also relied upon the decision of this Tribunal in the case of Poly Printers-2002 (139) ELT 295.

9. He further submits that the allegation has been made by the Revenue against unit No.II and II that they were not having manufacturing facility and the unit No.I cleared the goods clandestinely on the invoices issued by unit No.III and unit No.III. The said allegation is made on the basis of assumptions and presumptions, as the unit No.II and III were having purchase order for supply of machines and no evidence has been adduced by the Revenue to prove that the unit No.II and III have no manufacturing facility to manufacture the goods. Therefore, the unit No.II and III have manufacturing facility to manufacture the goods. He also relied upon the decision in the case of Oudh Sugar Mills vs.Union of India-2002 TIOL-307-SC-EX and in the case of Heliwal Polypackers Pvt.Ltd.-2016 (304) ELT 204.

10. On the other hand, Ld. AR opposed the contention of the Ld. Counsel and submits that the allegations against the appellants are that unit No.II and III have no manufacture facility to manufacture the goods in question, therefore, the same were cleared clandestinely by unit No.I. He relied on the chartered engineer's certificate dt. 16.5.2017 submitted by Shri R.K.Aggarwal certifying that unit No.II and III having no manufacturing facility to manufacture the goods in question. He has relied upon the decision of Hon'ble Rajasthan High Court in the case of M/s. S.N. Industries vs. Union of India-2015 (324) ELT 138 (Raj.).

11. Heard the parties and considered the submissions.

12. On careful consideration of the submissions made by both sides, we find that the allegation in the case is that unit No.II and III were not having manufacturing facility to manufacture the goods in question and the same have been manufactured by unit No.I which has been cleared on the invoices issued by units No.II and III, therefore the duty is required to be paid by the unit No.I for clearance of the said machines. Another allegation of the Revenue is that all the units are owned by family members and located in the same premises, there is financial flow back between the them, therefore clearance are to be clubbed with unit No.I.

13. We find in this case, the appellants have also produced report of chartered engineer, Shri N.K.Arora dt.30.3.2019 certifying that after examining the unit have stated that installed machines can manufacture machines in question by unit No.II and III. To counter the report of Shri R.K.Agarwal dt.16.5.2017, Shri N.K.Arora, chartered engineer by note dt.30.3.2019 stated that the units No.II and III are having manufacturing facility. There are contrary reports of chartered engineer before us. On examination of the reports, we find that the reports relied upon by the Revenue is without visiting and examining the machinery installed at unit No.II and unit No.III whereas the report produced by the appellants is based on physical verification of the machinery installed by the Chartered Engineer at unit No.II and unit No.III. As Shri N.K.Arora has given report after visiting the unit and have stated that Unit No.II and III are having manufacturing facility to manufacture the goods in question, therefore, the allegation made by the Revenue that unit No.II and III

are not having manufacturing facility is not sustainable. Therefore, it is held that the unit No.II and III are having the facility to manufacture the goods in question, therefore, the allegation against unit No.I is not sustainable.

14. We further take note of the fact that the allegation is that all the units are family concern, therefore, the clearance of made by all the units are to be clubbed with the clearances of unit No.I.

15. We find that unit No.I is private limited company and unit No.II and III are partnership concern, therefore, it cannot be said that all the units are family concerns as the director and the company are two separate entities.

16. We further take note of the fact that it has been alleged that in the impugned order that there is financial flow back among all the units. We further take note of the fact that merely fund flowing from each other cannot be the reason to club the clearance of all the units altogether as held by this Tribunal in the case of Alpha Toyo Limited (supra).

17. We further take note of the fact that Ld.AR relied upon the decision of Hon'ble Rajasthan High Court in the case of M/s. S.N.Industries (supra). We find that the facts of the said case are altogether different from the case in hand as in the said case, there was common purchase of raw material and integrated manufacturing of products but the same is not in the case in hand. Therefore, the case relied upon by the Ld.AR is not applicable to the facts of this case.

18. In view of the above observations, we hold that the allegation of the Revenue that unit No.II and III are not having manufacturing facility and the same cleared clandestinely by unit No.I are based on assumptions and presumptions. Therefore, the demands against the appellant are set aside and no penalty is imposable on all the appellants.

19. In the result, we set aside the impugned order and allow the appeals filed by the appellants with consequential relief, if any.

(pronounced in the open court on \_\_\_\_\_)

(ASHOK JINDAL)  
MEMBER (JUDICIAL)

(C.L.MAHAR)  
MEMBER (TECHNICAL)