

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 41358 of 2015

(Arising out of Order-in-Original No. 06/2015-CEx. dated 27.03.2015 passed by Commissioner of Central Excise and Service Tax, No. 1, Williams Road, Cantonment, Tiruchirappalli-620 001)

Smt. S. Varalakshmi, **...Appellant**
Partner of M/s. Hitech Tough Glass Industries,
No. 20/6, Ashok Nagar,
Thanthonimalai,
Karur – 639 005.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

With

Excise Appeal No. 41359 of 2015

(Arising out of Order-in-Original No. 06/2015-CEx. dated 27.03.2015 passed by Commissioner of Central Excise and Service Tax, No. 1, Williams Road, Cantonment, Tiruchirappalli-620 001)

Mr. K.S. Suriya Narayanan, **...Appellant**
Partner of M/s. Hitech Tough Glass Industries,
No. 20/6, Ashok Nagar,
Thanthonimalai,
Karur – 639 005.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

With

Excise Appeal No. 41360 of 2015

(Arising out of Order-in-Original No. 06/2015-CEx. dated 27.03.2015 passed by Commissioner of Central Excise and Service Tax, No. 1, Williams Road, Cantonment, Tiruchirappalli-620 001)

Mr. K.S. Santhosh Prasanna, **...Appellant**
Partner of M/s. Hitech Tough Glass Industries,
No. 20/6, Ashok Nagar,
Thanthonimalai,
Karur – 639 005.

Versus

E/41358-41360/2015

E/41562/2015

Commissioner of GST and Central Excise

Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Respondent

And

Excise Appeal No. 41562 of 2015

(Arising out of Order-in-Original No. 06/2015-CEx. dated 27.03.2015 passed by Commissioner of Central Excise and Service Tax, No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Hitech Tough Glass Industries

No. 20/6, Ashok Nagar,
Thanthonimalai,
Karur – 639 005.

...Appellant***Versus*****Commissioner of GST and Central Excise**

Tiruchirappalli Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Respondent**APPEARANCE:**

For the Appellants : Mr. M.N. Bharathi, Advocate

For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)****HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)****FINAL ORDER Nos. 40465-40468 / 2025**

DATE OF HEARING : 17.12.2024

DATE OF DECISION : 23.04.2025

Per Mr. VASA SESHAGIRI RAO

Excise Appeal No. E/41562/2015 has been filed
by M/s. Hitech Tough Glass Industries (hereinafter referred
to as 'Appellant') assailing the impugned Order-in-Original

No. 06/2015-CEx. dated 27.03.2015 passed by the Commissioner of GST & C.Ex Coimbatore confirming the demands of excise duty on clearances made during the period from April 2009 to 12.12.2013 under Section 11A(2) / 11A (10) of the Central Excise Act, 1944 (ACT) along with applicable interest besides imposing penalties under Section 11 AC *ibid* / Rules 26 of Central Excise Rules, 2002 (Rules) and ordering for confiscation under Rule 25 *ibid*.

1.2 Excise Appeals No. E/41358-41360/2015 have been filed by the partners of the Appellant assailing the above impugned order for imposing penalty under Rule 26 *ibid*.

1.3 The said appeals involving the same impugned order are being taken up for common disposal.

2. The Appellant, a partnership firm was engaged in the manufacture and clearance of Toughened glass for use automobile vehicles. The Appellant procured Float/Plain/ Sheet Glass from various vendors and processed them into toughened glass by cutting them to required size and shape and thereafter heating the glass and cooling it gradually to achieve toughness. It appears that the Appellant was under

the impression that they were engaged only in trading of glass products. The DGCEI conducted an investigation from which it appeared that the process undertaken by the Appellant resulted in manufacture of Toughened Glass falling under Central Excise Tariff 7007 1100 of CETA and further the value of clearances of the Appellant had to be arrived at based on their transaction value in terms of Section 4 of the ACT as the clearance were to industrial / institutional consumers. Further, the Department also sought to club the value of clearances of the Appellant with that of another unit M/s. Royal Tough Glass Works (RTGW) having the same partners as that of the Appellant and from 2012-13 onwards one of the partner's name was sought to be deleted by filing revised income tax returns. Further, the Department also alleged that the brand name 'Hitech' used by the Appellant was deceptively similar to the brand name 'Hi-Tech' registered in the name of other people and sought to deny the excise duty exemption under Notification No. 08/2003-CE dated 01.03.2003 as amended. A Show Cause Notice dated 06.06.2014 was issued to the Appellant proposing to classify the toughened glass manufactured and cleared by the Appellant for automobiles under CETH 70071100 of CETA and thereby proposing to demand duty & cess of Rs.1,15,32,006/- along with applicable interest, for the

period from 2009-10 to 12.12.2013, invoking extended period, besides proposing to impose penalty under Section 11 AC / Rule 25 *ibid* and to impose personal penalties on the three Partners under Rule 26 *ibid* and also proposed to confiscate the seized materials. The Adjudicating Authority *vide* the impugned order confirmed all the proposals put forth in the Show Cause Notice dated 06.06.2014 and imposed equal penalty under Section 11 AC *ibid* and personal penalties of Rs.50,000/- each on the partners. Being aggrieved, the appellants have filed these appeals before this forum.

3.1 The Ld. Counsel for the Appellant reiterated the grounds of appeal and submitted that the heat treatment of glass does not amount to manufacture as the product even after the process of cutting and annealing does not change the composition and no new distinct product emerges *per se* and therefore the demand is liable to be set aside as there is no manufacture. Reliance was placed in this regard on the ratio of the decisions in the case of *LAALJEE Godo and Co.* [2007 (216) ELT 514 SC], *Oscar Chemicals Ltd.* [2012 (276) ELT 162 (SC)] and *Bharat Forge and Press Industries Vs. CCE* [1990 (1) SCC 532].

3.2 It was averred that the demand is not sustainable as the goods were classifiable under Chapter Heading 700410/700420 whereas the demand was made by classifying the product under CETH 7007. Reliance was placed in this regard on the ratio of the decisions in the case of *Hindustan Safety Glass Works Ltd. Vs. Asst. CCE, Allahabad [1998 (97) ELT 185 (Tribunal)]*, *M/s. Chandra Lakshmi Laminated Safety Glass Ltd. Vs. CCE, New Delhi [1995 (77) ELT 877 (Tribunal – New Delhi)]*.

3.3 It was submitted that even for the sake of argument, if it was accepted that annealing amounts to manufacture, then duty demand should have been restricted only to goods manufactured whereas demand included traded goods like ply wood and other plain / processed glasses cleared as such without processing and by excluding the same, the turnover was within the threshold limit of SSI exemption and not to be subjected to duty demand.

3.4 It was also submitted that the Adjudicating Authority ignored the Appellant's claim for availing Cenvat credit on raw material, capital goods and input services in case the process carried out by them was treated as manufacture.

3.5 It was submitted that mere presence of common partners was not a criterion for clubbing the value of clearances as there is no proof to the effect that one is a façade while in reality only one unit existed. As in the instant case, both the firms were separate legal entities without any common manufacturing facilities and the value of clearances could not be clubbed by no stretch of imagination relying on the ratio of the decision in the case of *Sree Nirmal Spinners Vs. Commissioner of C. Ex, Coimbatore [2014 (300) ELT 469 (Tri.-Chennai)]*.

3.6 It was put forth that the brand name 'Royal' was registered in the name of the Appellant and as the goods were not manufactured, they were not liable for confiscation.

3.7 It was submitted that there was no deliberate attempt to evade payment of tax and hence the necessary ingredients to invoke the extended period was not available. Reliance was placed on the decision in the case of *Tamilnadu Housing Board Vs. CCE [1994 (74) ELT 9 (SC)]* wherein it was held that where there was a scope of doubt whether duty was payable or not, there is no intention to evade duty. Reliance was also placed on the decisions in the case of

*Collector Vs. Chemphar Drugs [1989 (40) ELT 276 (SC)],
M/s. Pahwas Chemicals Vs. CCE [2005 (189) ELT 257 SC],
M/s. Hindalco Industries Ltd. Vs. CCE [2003 (161) ELT 346]
and M/s. Pushpam Pharmaceuticals Vs. CCE [1995 (78) ELT
401].*

4.1 Shri Anoop Singh, Ld. Authorized Representative for the Department affirmed the findings in the impugned order and submitted that the case laws cited by the Appellant are related to classification of laminated glasses and hence irrelevant and as the process undertaken by them is thermal toughening and accordingly the contention that the manufactured item was classifiable under the tariff head 7004 is not sustainable and liable to be dismissed.

4.2 It was informed that the process undertaken by the Appellant was thermal toughening of glass which made the glass much stronger than annealed glasses which were meant to be used as windshield and as windows in automobiles.

4.3 It was submitted that the claim for Cenvat Credit was liable to be denied as Cenvat credit was only available only

on the inputs used in the manufacture on which appropriate duty was paid and therefore it was essential that the records relating to receipt, consumption, disposal and inventory of the duty paid inputs was required to be produced with proper documentary evidence.

4.4 It was submitted that the decision of the Hon'ble Apex Court in the case of Unison Electronics was applicable to the facts of the case and as the brand name Hitech was registered in the name of persons other than the Appellant, SSI exemption was liable to be denied.

4.5 It was submitted that the Appellant had suppressed material facts deliberately with an intent to evade payment of duty and hence the invocation of extended period for demand of duty was sustainable.

5. We have carefully considered the submissions made by both the sides and also evidences available on records.

6. The issues which arise for consideration in these appeals are: -

- i. Whether the toughened glass produced by the Appellant upon processing of Clear Float / Plain glass amounts to manufacture and whether the demand of duty by invoking extended period is justified or not?
- ii. Whether penalties imposed on the partners under Rule 26 of the Central Excise Rules, 2002 are maintainable or not?

7. We find that the Appellant herein, had after further processing of clear float/ plain glass procured from vendors, cleared the same to Automobile Industries. The department stand is that the process undertaken by the Appellant is thermal toughening of glass which is stronger than annealed glasses and hence duty demand is sustainable. The Department also sought for clubbing of clearances of two units managed by the same partners and sought to deny the SSI exemption for usage of brand name of others. The Appellant has contended that no new distinct product emerges as a result of the process undertaken by them and hence demand could not sustain. It was also contended that mere presence of same partners in two independent entities is not the only criterion for clubbing of clearances.

8. On the issue of demand of duty on toughened glass, Appellant intends to classify the product under CETH700410/700420 whereas the demand was made by the department by classifying the product under CETH 700711. As such, it is essential first to examine the products classifiable under Chapter 70 of CETA and relevant HSN explanatory notes.

“As Per Central Excise Tariff

Tariff Item	Descriptions of goods	Unit	Rate of Duty
7004	DRAWN GLASS AND BLOWN GLASS, IN SHEETS, WHETHER OR NOT HAVING AN ABSORBENT, REFLECTING OR NON-REFLECTING LAYER, BUT NOT OTHERWISE WORKED		
7004 20	Glass, coloured throughout the mass (body tinted), opacified, flashed or having an absorbent, reflecting or non-reflecting layer: Window glass (sheet glass):		
7004 20 11	Tinted	m ²	16%
7004 20 19	Other Other:	m ²	16%
7004 20 91	Tinted	m ²	16%
7004 20 99	Other	m ²	16%
7004 90	Other glass: Window glass (sheet glass):	m ²	16%
7004 90 11	Tinted	m ²	16%
7004 90 19	Other Other:	m ²	16%
7004 90 91	Tinted	m ²	16%
7004 90 99	Other	m ²	16%
7005	FLOAT GLASS AND SURFACE GROUND OR POLISHED GLASS, IN SHEETS, WHETHER OR NOT HAVING AN ABSORBENT, REFLECTING OR NON-REFLECTING LAYER, BUT NOT OTHERWISE WORKED		
7005 10	Non-wired glass, having an absorbent, reflecting or non-reflecting layer		
7005 10 10	Tinted	m ²	16%
7005 10 90	Other Other non-wired glass:	m ²	16%

7005 21	Coloured throughout the mass (body tinted) opacified, flashed or merely surface ground:,		
7005 21 10	Tinted	m ²	16%
7005 21 90	Other	m ²	16%
7005 29	Other:		
7005 29 10	Tinted	m ²	16%
7005 29 90	--- Other	m ²	16%
7005 30	Wired glass:		
7005 30 10	Tinted	m ²	16%
7005 30 90	Other	m ²	16%
7006 00 00	GLASS OF HEADING 7003, 7004 OR 7005, BENT, EDGE-WORKED, ENGRAVED, DRILLED, ENAMELLED OR OTHERWISE WORKED, BUT NOT FRAMED OR FITTED WITH OTHER MATERIALS		
7007	SAFETY GLASS, CONSISTING OF TOUGHENED (TEMPERED) OR LAMINATED GLASS Toughened (tempered) safety glass:		
7007 11.00	Of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels	Kg	16%
7007 19 00	Other Laminated safety glass:	m ²	16%
7007 21	Of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels:		
7007 21 10	Bullet proof glass	Kg	16%
7007 21 90	Other	Kg	16%
7007 29 00	Other	m ²	16%

General notes to HSN explanatory notes and Central Excise Tariff for Chapter 70 states:

2- For the purposes of headings 70.03, 70.04 and 70.05 :

(a) glass is not regarded as " worked " by reason of any process it has undergone before annealing;

(b) cutting to shape does not affect the classification of glass in sheets;

(c) the expression "absorbent, reflecting or non-reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass.

3.- The products referred to in heading 70.06 remain classified in that heading whether or not they have the character of articles.

HSN

70.04- Drawn glass and blown glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.

7004.20 Glass, coloured throughout the mass (body tinted), opacified, flashed or having an absorbent, reflecting or non-reflecting layer

7004.90 - Other glass

This heading is restricted to drawn glass and blown glass which must be unworked and in sheets (whether or not cut to shape).

The non-mechanical blowing process, now more or less completely discarded (except for certain special types of glass), has been replaced by various mechanical processes consisting essentially of drawing (e.g., the Fourcault, Libbey-Owens or Pittsburgh processes) or of drawing combined with blowing.

The glass of this heading may be of various thicknesses but, in general, is less thick than cast glass of heading 70.03. It may be coloured or opacified in the mass, or flashed with glass of another colour during manufacture or may be coated with an absorbent, reflecting or non-reflecting layer.

Drawn glass and blown glass are frequently used in the form in which they are originally produced, without any further

working. In addition to their main use as glass for windows, doors, display cases, greenhouses, clocks, pictures, etc., these types of glass are also used as parts of articles of furniture, for photographic plates, plain spectacle glass, etc.

The heading excludes drawn glass and blown glass which have been surface ground, polished or otherwise worked (see the Explanatory Notes to headings 70.05, 70.06, 70.09, etc.).

70.07 - Safety glass, consisting of toughened (tempered) or laminated glass.

- Toughened (tempered) safety glass:

7007.11 - - Of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels

7007.19 - - Other

- Laminated safety glass:

7007.21 - - Of size and shape suitable for incorporation in vehicles, aircraft, spacecraft or vessels

7007.29 Other

The term "safety glass" covers only the types of glass described below and does not refer to protective glass such as ordinary wired glass and selective absorption glasses (e.g., anti-glare glass, X-ray protective glass).

(A) Toughened (tempered) glass.

This is:

(1) Glass obtained by reheating pieces of glass until they are soft but not soft enough to lose their shape. The glass is then cooled rapidly by appropriate processes (thermal-toughened glass).

(2) Glass whose strength, durability and flexibility have been substantially increased by a complex physical-chemical treatment (e.g., ion-exchange) which may include a

modification of the surface structure (commonly known as "chemically toughened glass").

This glass cannot be worked after manufacture because of the internal stresses set up by the processing and is therefore always produced in the shapes and sizes required before tempering."

9. We find that the Appellant is cutting the glass procured to required size/ shape before heating and cooling it to produce Toughened Glass in commercial Parlance. It is seen that Chapter Head 7007.11 covers Toughened (tempered) safety glass, of size and shape suitable for fitment onto automobile vehicles, aircrafts, etc. The tempered/ toughened glass is obtained by reheating pieces of glass until they are soft without losing their shape and then the glass is cooled rapidly by appropriate processes. A characteristic of toughened safety glass is that under the effect of shock it breaks into small fragments without sharp edges or even disintegrates thus reducing the danger of injury from flying fragments. Because of the safety qualities of the toughened glass, they are used on windscreens of motor vehicles and also on windows of four wheelers. We find that the processes undertaken by the Appellant aptly fit into the description of the material mentioned in Chapter 7007.11. We are also satisfied that the product manufactured will not fall under Laminated safety Glass as

interlayers of plastics between two or more sheets of glass is not present. The Appellant maintains that the product is classifiable under Chapter Head 7004 which is restricted only to drawn/ blown glass which is manufactured by various mechanical processes consisting essentially of drawing or drawing combined with blowing. We find that the manufacturing process of the Appellant does not involve any blowing / drawing the glass. Further, the drawn and blown glass are frequently used in the form in which they are produced without any further process.

10. The Appellant has also contended that no new product emerges as a result of the process undertaken by them. We may now examine whether the process in question, amounts to manufacture in terms of Section 2(f) of the Act. It is trite to state that "manufacture" can be said to have taken place only when there is transformation of raw materials into a new and different article having a different identity, characteristic and use. It is also well settled that mere improvement in quality does not amount to manufacture. It is only when the change or a series of changes take the commodity to a point where commercially it can no longer be regarded as the original commodity but is

instead recognized as a new and distinct article that manufacture can be said to have taken place.

11.1 In *Delhi Cloth & General Mills Co. Ltd. (supra)*, the Hon'ble Apex Court's Constitution Bench, exploring the concept of manufacture echoed the following views: -

"14The word 'manufacture' used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American judgment. The passage runs thus :-

"Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."

22. In *Deputy Commissioner Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers*, 1980 (6) E.L.T. 343 (S.C.), a three Judge Bench of this Court, while deciding whether conversion of pineapple fruit into pineapple slices for sale in sealed cans amounted to manufacture, observed as follows :-

"4.....Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered,

the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place.”

We find that the Appellant procures ordinary glass sheets which had already been manufactured and cleared after payment of duty. These processed glass sheets were cut to specific shapes and sizes and thereafter their edges were grounded, cavities were marked, holes drilled so as to make them suitable for being used in a specified part of a particular make of a motor vehicle. We find that technically, manufacture of ordinary glass sheet is different from that of toughened glass; inasmuch as the former was prepared only by melting of more than one chemicals (normally silica and soda ash) in a melting furnace and the molten material is then given desired form by different processes viz., casting or blowing or drawing, and that the process used in the manufacture of ordinary glass sheets is that of drawing; and the products of the respondent, used this ordinary glass as raw material, and after subjecting them to the processes detailed above, the sheets so grounded were subjected to toughening process in an electrically operated furnace, and then rapidly cooled in a blast of air, so as to develop such

special characteristics which can make them fit for use as wind screens, vehicle window glasses, etc. After undergoing the toughening process, the shapes and sizes become unalterable so much so that even a hole could not be drilled therein, and that physical characteristics of the two products; namely ordinary glass and toughened glass were quite different, inasmuch as the ordinary glass sheet could be cut into any shape and size and breaks into undefined and irregular splinters with sharp edges whereas the toughened glass breaks into polygonal crystals with rounded edges into a very large number of pieces in a given area (the number of such pieces in one square meter area normally being more than 25,000); the object being that in the event of being struck by a heavy object it should break into thousands of fragments so as not to cause any injury to the occupants or driver of the vehicle.

11.2 The case laws cited by the Appellant have been examined and as they are not directly relevant and applicable to the facts of the present case, they are ignored. In *Hindustan Safety Glass Works Ltd. Vs. Asst. CCE, Allahabad [1998 (97) ELT 185 (Tribunal)]*, the issue involved is about the dutiability of the broken glass/cullets arising during manufacture of toughened glass/ laminated safety

glass. In Chanderlakshmi Tempered Glass (P) Ltd., the issue pertained to excess quantity of toughened / safety glass and nothing to do with classification of toughened glass. Hence, in view of the above discussions, we are of the view that the Toughened glass manufactured by the Appellant falls under CETH 7007.11. Thus, the issue of classification is against the Appellants.

12.1 The Department has sought to club the value of clearances of the Appellant with that of M/s Royal Tough Glass Works (RTGW) citing presence of common partners in both the units. We find that both RTGW and Appellant are separate and distinct entities with separate manufacturing facilities. The SCN does not allege that any financial flowback of funds or mutuality of interest between the units. It would now be expedient to examine the ratio of the decisions of various fora on the issue of clubbing of clearances.

(i) In *Sree Nirmal Spinners Vs. Commissioner of C.Ex, Coimbatore [2014 (300) ELT 469 (Tri.-Chennai)]*, this Tribunal held as follows: -

"11. The Hon'ble Supreme Court in the case of Electro Mechanical Engineering Corporation (supra) held that certain employees of three firms common and their premises adjoining each other and in the absence of evidence on record

to prove mutuality of interest or flowback of funds from one unit to another, value of clearances of two units cannot be clubbed. In the case of Techno Device (supra), it has been held that maintenance of accounts of various units by a single person and at one office is not a ground for justifying clubbing, if different firms operated with its own machinery in separate premises leased from appellant, clubbing their clearances cannot be justified. It is also held that a single security guard was in charge of security of all units in no way contributed to a finding that clearances of these units could be clubbed. Mutuality of interest, financial integrity among the units are significant factor for clubbing of clearance of units involved. In the case of Balsara Hygiene Products Ltd. (supra), it has been held that clubbing of two units cannot be made on the premise that assessee sold/cleared their entire production to other units. Hence we are of the view that there is no reason for clubbing of both the units.

12. We agree with the submission of the learned counsel that when a show cause notice proposed for clubbing the value of clearances for two units and notice was issued only one unit and not to the other, when the separate existence of both the units are projected, the notice is bad in law and the proceeding is liable to be set aside. In this context, the Tribunal has delivered a series of decisions as referred by the learned counsel. It is noticed that both the units have separate sheds and machineries and cleared the goods in their own invoice.

13. The learned AR relied upon various case laws which are not applicable to the facts and circumstances of the present case. In the case of Himanshu Traders (supra), the impugned goods were actually manufactured in the factory of a firm and billed in the name of other company found to be clearance of the firm and clubbing of same affirmed. In the present case, it is evident that both the units have machinery and sheds and

cleared the goods in their own invoices. In the case of Rasayan Udyog (supra), the partner of the assessee-unit admitted that her unit does not have any machinery and goods manufactured from the appellant had the common trade name of both the units, same letter heads and symbols of both companies were identical. In the case of Simplex Expeller Works (supra), the manufacturing activity was carried out in a common hall with no apparatus and machinery for manufacturing was found only in Unit No. 1 and the other units were lacking insufficient machinery and power connections. In the present case, it is seen that there is separate shed, separate power connections etc. In view of that, we find that case laws relied upon by the learned AR would not apply in the present case.

14. In view of the above discussion, we find that the demand of duty, interest and penalty are not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed with consequential benefit, if any."

(ii) A reference is invited to the ratio of the decision in the case of *CCE Vs. Suchita Steels (India) Ltd. [2015 (327) ELT 378]* wherein it was held as follows: -

"8. When department recognise Suchita Steels was a different concern formed from the year 1992 it was not brought out that the fund of HUF was invested either in Suchita Steels, Mohali from 1992 or Suchita Steels, Mohali from 1998. Therefore, there was absence of investment by the Karta therein on behalf of the HUF. That brought out distinction to this case. So also there was no investment of the fund by Mohali Chandigarh for day-today carrying on the business by two Mohali units except that there was sharing of infrastructure and using of common utilities as well as availing service of manpower. There is nothing on record to show that

late Shri Avdesh Garg was controller of these two Mohali units making the proprietors thereof as well as partner of M/s. Suchita Steels, Mohali dummy. Nothing is on record to show that late Avdesh Garg was the financial controller as well as beneficiary of the three units. In absence of inextricable link between Avdesh Garg showing his vested interest in Mohali units, so also no pecuniary interest of Chandigarh unit in two Mohali units was proved. Therefore, the adjudication cannot be approved.

9. In the result, the appellate order is maintained, and Revenue appeal is dismissed."

(iii) Similarly, we find that in *CCE Vs. Arbuda Industries [2008 (230) ELT 159]* it was held that clubbing of clearances of two units, one owned in individual capacity and other as Karta as HUF, is not appropriate, when there is no evidence showing that the two units were not having independent existence found- both the units having separate income Tax PAN no. separate sales tax, etc. which could establish their independent identity. The relevant extracts of the above order has been reproduced below: -

"4. On appeal against the above order, Commissioner allowed the same by observing as under:

"I find from the records there is nothing on records in the form of statement or evidence which establishes with reasonable certainty that manufacturing activity was or had been carried out exclusively in the factory premises of M/s. Arbuda Industries only. If the department was sincerely concerned to hold that M/s. Arbuda Enterprise was a dummy unit of M/s. Arubda Industries or was

underveil or was a cover only then in that case they ought to have investigated deeply and could have gathered the material evidences on which the person of ordinary intelligence and prudence could be led to believe that M/s. Arubda Enterprise had been created as a facade or is a farce unit. It is worth mentioning that in their written submission before the undersigned the appellants have filed reliable, material evidences which clearly discloses their independent identity and a separate legal entity of M/s. Arbuda Enterprises. In their written submission they have submitted that both the units are having other set of machineries for the purpose of manufacturing. That both the units have separate Income Tax PAN No., separate sales tax registration, separate professional tax registration, separate electricity meters etc. While examining this case on legal frame, I find that the law is well settled by the Apex Court which is that in cases where there are allegations of clubbing of clearances, mutuality of interest and financial flow back is required to be established.”

As such, by relying upon the various decisions of the Tribunal laying down that where one unit owned by same person in his individual capacity and the other unit as karta of HUF, their clearances could not be clubbed. Inasmuch as in the instant case, the revenue has not come up in any evidence to show that the two units were not having independent existence, the clubbing of clearances is not appropriate.

5. The Revenue in their memo. of appeal have not rebutted the observations made by the Commissioner (Appeals) that both the units are having separate machineries, separate income-tax PAN No., separate sales tax, separate professional tax registration and separate electricity meters. It is also seen from the panchanama itself that there were separate machinery installed in the factory premises of both the appellants and

production activity was going on. It is well settled law that the clubbing of clearances, when the two units can establish their independent entity, is not called for, as rightly held by the Appellate authority. There is nothing on record to show that both the units were not independent and thus not entitled individually to the benefit of Notification No. 8/98. I find no infirmity in the view adopted by the Commissioner (Appeals). The appeal filed by the Revenue is accordingly, rejected."

(iv) The Hon'ble High Court of Rajasthan, at Jaipur Bench in the case of *Renu Tandon Vs. UOI* [1993 (66) ELT 375 (Raj.)] held that value of clearances of two units cannot be clubbed together and the two units cannot be treated as one unit merely because of proximity of relationship or the situation of the two factories or because there are some common employees. There should be clear evidence of mutuality of interest and have common funding and financial flow back. The above judgement was also affirmed by the Hon'ble Supreme Court.

(v) In case of clubbing of clearances of different units to deny the SSI exemption benefit there should be concrete evidence of mutuality of interest, financial flow among the units. The decision in the case of *CCE Chennai IV Vs. B.K. Office Needs (P) Ltd.* [2015 (418) ELT 288 (Tri.-Chennai)] was relied wherein it was held that mere common partners, common staff, common managerial control is not enough to

hold that there is flow back of funds and mutuality of interest so as to club the clearances.

(vi) The Tribunal in the case of *Associated Engineering Projects Vs. CCE & ST Meerut-I* [2019 (370) ELT 756 (Tri.-All.)] while considering the issue of clubbing of clearances held that merely because the units were run by some family members and books of accounts maintained by an accountant in one common office it cannot be held that there is mutuality of interest or financial flow back. In the absence of such evidence, the clearances cannot be clubbed.

"5. We find in the present case that the individual manufacturing appellants have independent identities since the Revenue could not establish that their books of accounts are common, that their bank accounts are common, that their registration with Income Tax, Sales Tax are common and that there is common funding and that there is mutuality of interest and that there is financial flowback and that the units which were held to be dummy did not have any manufacturing facility. In the absence of any such evidence, we hold that the manufacturer units are independent units and therefore, their clearances could not be clubbed together. We, therefore, hold that denial of benefit of SSI Exemption to the manufacturer appellants is not sustainable and therefore, demands confirmed against them are not sustainable.

6. We, therefore, set aside the impugned order and allow all the appeals with consequential relief, as per law."

(vii) In the case of *CCE Vs. Saron Mechanical Works* [2016 (332) ELT 80 (P&H)], it was held that clubbing of clearances

cannot be done without declaring one unit as the dummy unit. The unit which was already working for almost six to seven years could not be said to be a dummy of another unit which is yet to come into existence. Mere quoting of statements of proprietors and employees was not enough. Also, use of common electricity connection, accountant, storeroom for raw materials could not be reason for clubbing of clearances.

(viii) In the case of case of *CCE Vs. S.C. Patel [2011 (264) ELT 414]* on the issue of SSI Exemption it was held that Clearances of units having proximity, common passage and storage of raw materials, and inter-relationships between their partners with no evidence of flow back between units, both units having separate income/sales tax, import and export code numbers, bank accounts etc. cannot be clubbed.

(ix) The Tribunal in the case of *CCE Vs. Balsara Hygiene Products Ltd. [2012 (278) ELT 526]* which was later affirmed by the Hon'ble Supreme Court held that mere fact of management control or grant of interest free loan not sufficient to hold the units as a dummy unit in absence of any money flow back and/or profit sharing and total control on another unit and there is no reason for said units to be considered as dummy unit and that Clubbing of two units

cannot be made on the premise that assessee sold/cleared their entire production to other units.

12.2 We have taken note of the appellant's submission that mere presence of common partners is not a valid criterion for clubbing of clearances of two related units and that there should be flow of funds and proof to the effect that one is a facade and in reality, only one unit exists. In this appeal under consideration both the firms are of two different partnership firms, have separate manufacturing facilities separate income tax and sales tax registration assessments, separate factories and one located in the jurisdiction of Trichy Central Excise Commissionerate and other located in Coimbatore. We find that the main contention of the Ld. Counsel for the appellant is that both the units are separate and distinct. The difference between the two units have been tabulated as below.

S.No.	Nirmal Spinners	Narayana Spinners
1	Provisional Registration Certificate dated 21.12.1994 as SSI with Directorate of Industries	Provisional Registration Certificate dated 18.06.1994 as SSI with Directorate of Industries
2	Certificate of Registration of firms dated 14.07.1995	Certificate of Registration of firms dated 18.07.1994
3	TNGST Registration Certificate dated 12.01.1995	TNGST Registration Certificate dated 24.06.1994
4	CST Registration Certificate dated 12.01.1995	CST Registration Certificate dated 24.06.1994
5	Acknowledgement dated 07.04.1995 from Ministry of Textiles for installation of	Acknowledgement from Ministry of Textiles dated 23.08.1994 for installation of

	machineries for manufacture of spinning of yarn. Amendment certification from Ministry of Textiles dated 12.02.1996	spindles. Acknowledgement from Ministry of Textiles dated 13.03.1995 for installation of spindles.
6.	Registration with Coimbatore Market Committee dated 01.08.1995	Renewal of Registration dated 4/95 by Coimbatore Market Committee
7.	Separate power connection	Separate power connection
8.	Partnership deed dated 12.12.1994 i. V. Harigopal ii. Sripriya Purushothaman iii. V. Subashini Vasudevan iv. Nirmal Narayanan	Partnership deed dated 08.06.1994 i. V. Vasudevan ii. Harigopal iii. V. Thayar iv. V. Purushothaman
9.	Lease deed dated 30.12.1994 between Viswanathan (Lessor) and Nirmal Spinners Area taken on rent Godown C: Shed measuring 6052 sq. ft.	Lease deed dated 19.09.1994 between Viswanathan (Lessor) and V. Vasudevan - Sri Narayana Spinners Area taken on rent Varanda 504 sq. ft. Shed 1426 sq. ft.
10.	Agreement dated 22.02.1995 between Sree Nirmal Spinners and Narayana Spinners for conversion of cotton into simplex bobbins Nirmal Spinners – supplier	Narayana Spinners – job workers
11.	Machineries Owned: - 3 carding machinery 1 drawing machinery 1 simplex machinery	Machineries Owned: - Blowroom machinery 4 carding machinery 2 drawing machinery 2 simplex machinery 1 winding machinery

Further, it is to be noted that though an allegation is made against the appellant to club the clearance of the unit at Coimbatore, no details of clearances of Royal Tough Glass Works has been ascertained in this notice and that unit was not put on notice as legally required.

12.3 In view of the above discussions and appreciating the ratio of above case laws, we are of the considered view that the clubbing of clearances of the said units is not legally permissible for demand of duty.

13. Regarding the allegation of usage of brand name of others, it was alleged that the brand name 'Hitech' used by the Appellant was deceptively similar to the brand name 'Hi-Tech' registered in the name of other owners. Whereas, the Appellant has argued that brand name 'Hi-Tech' has been registered in their name and it was submitted that the copy of the application for registration of the brand 'Hi-Tech' was sent as an enclosure with the reply to the notice issued. It also became evident from the facts that there was no objection to such usage by other brand owners. We find that the brand name Royal is registered in the name of the Appellant. The brand name Hitech was only used to project the image of the manufacturer in general. The SCN has not alleged as to how it has established any relationship between the mark Hi-Tech used by others with the Appellant. No statement has been recorded from such brand owners objecting to the usage of brand name by the Appellant. A "Brand name" is a name or trademark either unregistered or

registered under the Trade Mark Act, 1999. Therefore, it is not necessary that "Brand name" should be compulsorily registered. A person can carry on his trade by using a "Brand name" which is not even registered. But in violation/infringement of trademark, remedy available would be distinctly different to an unregistered brand name from that of remedy available to a registered brand name. 'Hitech' trademark whether registered for toughened glass by others is not forthcoming from the facts. Therefore, we are of the view that the denial of SSI exemption on the allegation of usage of brand name of others is not valid.

14. The Appellant was procuring the Clear Float Glass and other glasses from reputed manufacturers viz., Saint Gobain, Asahi, etc. and was undertaking the process of toughening, so that it could be safely used in various automobiles. They have claimed for Cenvat credit eligibility on inputs, input services and capital goods used for producing toughened glasses and undertaken to produce copies of input invoices and details of Cenvat credit eligible has been submitted in the form of a statement in their reply to the Show Cause Notice dated 06.06.2014. We find that the dis-allowance of Cenvat credit by the Authority is not legal and proper. It is not in dispute that in normal

circumstances the appellant would have been eligible to avail Cenvat credit on the purchase of raw materials, which are used in the manufacture of any dutiable product. It was pointed out by Ld. Counsel that the benefit of credit has been denied to the Appellant on the grounds of non-compliance pertaining to maintenance of records and submission of returns. A perusal of the Cenvat Credit Rules would show that there is no rule prohibiting extending the benefit of Cenvat credit in a case where it is found that there was suppression of manufacture and clearance of dutiable goods. Since the lower authority failed to consider the factual position before issuance of the impugned order, basing on factual circumstances, we hold that the Appellant is eligible to adjust the Cenvat credit against the duties payable. As such, the denial of Cenvat credit benefit to the assessee, could not be justified. We find that in similar circumstances, in the case of *ICON Industries Vs CCE, Delhi-I [2018 (363) ELT 114 (Del.)]* it was held by the Hon'ble Delhi High Court as follows: -

"15. In view of the above findings, there is no dispute that the inputs used i.e. PVR resin was by the assessee M/s. Icon Industries; in fact, the basic duty liability and penalty have been imposed on the basis of these findings. However, it is equally a matter of record that certain quantity of PVR resin too was used as a raw material. There may be no doubt that with respect to other inputs the assessee did not possess any

document. However, that ought not have blinded the authority taking note of material which did exist on record (in the form of the payments made towards CVD) which can be legitimately claimed as input credit by the assessee. The record as it stands today also points to the assessee being given the benefit of SSI status and its consequential entitlement to such exemptions as are permissible. Given these circumstances and findings, the denial of Cenvat credit benefit to the assessee, was not justified. The impugned order of the Tribunal is therefore set aside. The respondent-Central Excise Authorities are directed to proceed to grant such Cenvat credit as is permissible to the appellant/assessee, having regard to the documents which are on record and which may be relevant and can be produced by it for the purpose. The question of law is answered in favour of the assessee and against the Revenue.

16. The appeal is allowed in the above terms."

15. The Ld. Advocate Representing the Appellants has filed a Miscellaneous Petition on the issue of valuation. It was submitted that the value on the toughened glass clearances is required to be determined under Section 4A of the Central Excise Act, 1944 as majority of the clearances were affected to the traders and on very few occasions, the goods were sold to the Tamilnadu State Transport Corporation and other institutional buyers. It was also put forth that if the sales of toughened glass clearances are assessed under Section 4A of the Act, their value of clearances would be within the SSI exemption threshold limit. The impugned product is covered under Section 4A in

terms of Sl.No. 108 of the Notification No. 49/2008-CX(NT) dated 24.12.2008. As such, we are of the view that as majority of the goods are cleared to the traders the valuation that is required to be adopted is under Section 4A of the Act *ibid* excepting the clearances made to any institutional buyers.

16.1 The reasons for invoking the extended period of time as stated in paragraph 18 of the said show cause notice are that the Appellant have indulged in manufacture and clearance of excisable goods without taking statutory registration and without payment of duty and suppressed the usage of brand name of others to the department, thereby wrongfully availing the SSI exemption. Whether clubbing of clearances of two SSI units located in different jurisdictions may be belonging to a family or the same partnership firms and whether toughening process undertaken by the Appellant amounts to manufacture are interpretation in nature. No *malafide* could be deduced for not taking Registration and non-payment of duty in this case.

16.2 The Ld. Counsel for the Appellant placed reliance on the decision in the case of *Tamilnadu Housing Board Vs. CCE [1994 (74) ELT 9 (SC)]* wherein it was held that where

there was a scope of doubt whether duty was payable or not, there is no intention to evade duty. The basic requirement that duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud; or collusion; or wilful mis-statement; or suppression of facts; or contravention of any of the provisions of this chapter or of the rule made thereunder with an intent to evade payment of duty by the person chargeable with excise duty is not satisfied. The Adjudicating Authority is bound to disclose the reasons for the formation of such belief which is missing in the case.

16.3 We find that mere non-payment of duty would not enable the authorities to invoke the extended period of limitation. The contravention necessarily has to be with an intent to evade payment of duty. It is a settled law that once the goods are correctly described, the bona fide adoption of classification by the importer cannot be equated with mis-declaration as the manufacturers are not expected to be fully conversant with schedule to the Tariff Act. WE find that the allegation of wilful mis-declaration by the Appellant is not at all tenable as claiming a particular classification under the Central Excise Tariff does not amount to misstatement in terms of the ratio of the decisions in *Northern Plastic Ltd. Vs.*

Collector of Customs, Central Excise [1998 (101) ELT 549 (SC)] and Commissioner of Central Excise, Delhi Vs. Ishaan Research Lab (P) Ltd. [2008 (23) ELT 7 (SC)] which are applicable to the facts of this case.

16.4 It appears to us on perusal of the impugned notice, that the lower authority proceeded on the basis that there had been contravention, as a result of which, some tax payable had not been paid. The lower authority failed to address the issues which were required to be addressed, for issuing a notice by invoking the extended period of limitation. No finding of positive suppression by the Appellant has been made out eventually.

17. After appreciating the facts and the evidence placed before us, we are of the considered opinion that the Show Cause Notice dated 06.06.2014 is barred by limitation and the extended period of limitation invoked in this case is not maintainable and consequently, the penalty imposed in the impugned order is not sustainable.

18. The Adjudicating Authority has confiscated the toughened glasses seized on 13.12.2013 which was valued at Rs.54,735 under Rule 25 of the Central Excise Rules, 2002

giving an option to redeem the same on payment of a fine of Rs.7,000/-. As it has been held above that the appellant is eligible for SSI exemption and there is no suppression on the part of the Appellant, we set aside the confiscation and order for release of these seized goods to the Appellant.

19. The impugned Order-in-Original No. 06/2015-CEx. dated 27.03.2015 has imposed personal penalty under Rule 26 of the Central Excise Rules, 2002 on Shri K.S. Santhosh Prasanna, Shri K.S. Suriya Narayanan and Smt. S. Varalakshmi who are the partners of the appellant firm on the ground that they have played an active role in dealing with the excisable goods which they know are clearly liable for confiscation. As it has been already held that there is no ground for clubbing of clearances for the purpose of SSI exemption and also that invoking extending period as not justified, the penalties imposed on the partners could not be sustained as there is no suppression found on their conduct.

20. Consequently, the impugned Order-in-Original No. 06/2015-CEx. dated 27.03.2015 of the Commissioner of Central Excise and Service Tax, Trichy cannot be sustained except for demand of duty to be computed on the clearances of the toughened glass for the normal period after according

the cum duty benefit. Further, the Appellant is entitled to avail and adjust Cenvat credit for payment of the duty for the normal period. The penalty imposed under Section 11AC on the appellant is ordered to be set aside. Likewise, the penalties imposed on the partners of the Appellant are also set aside.

21. In the result, Appeal No. E/41562/2015 is partly allowed on above terms and the Appeal Nos. E/41358-41360/2015 are allowed with consequential reliefs, if any, as per the law. The Miscellaneous Petition is also disposed of.

(Order pronounced in open court on 23.04.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)