CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No.50498 of 2019

[Arising out of Order-in-Appeal No.460-464 (SM) CE/JPR/2018 dated 01.11.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. Sona Plastic Udyog, **...Appellant**
Khasra No.29-30,
Boyatawala, Benad Road,
Jaipur.

VERSUS

Commissioner of Central Goods & Service Tax
Commissionerate, Jaipur **...Respondent**

With

Excise Appeal No.50536 of 2019

[Arising out of Order-in-Appeal No.460-464 (SM) CE/JPR/2018 dated 01.11.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

Harphool Singh Jhuria **...Appellant**
Authorised Representative,
M/s. Sona Plastic Udyog,
Khasra No.29-30,
Boyatawala, Benad Road,
Jaipur.

VERSUS

Commissioner of Central Goods & Service Tax
Commissionerate, Jaipur **...Respondent**

APPEARANCE:

Mr.Arun Goyal, Advocate for the Appellant
Mr.O.P. Bisht, Authorised Representative for the Respondent

Coram: HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 10.12.2019
DATE OF DECISION : 08.01.2020

FINAL ORDER No. 50016-50017/2020

RACHNA GUPTA:

Present order disposes of two different appeals, issue involved being common to both the appeals, the details are as follows:-

<table>
<tr><th>Appeal No.</th><th colspan="2">Show Cause Notice No. 7 date</th><th>Amount of Refund</th><th>O-I-O No. & date</th><th>O-I-A No. & date</th></tr>
<tr><td rowspan="3">50498</td><td>1</td><td>SCN for rejection of refund dated 24.01.2017</td><td>Rs.25.00 Lacs</td><td>1. 35/17-18 dated 21.06.2017</td><td rowspan="3">460-464 dated 01.11.2018</td></tr>
<tr><td>2 (a)</td><td>SCN issued for seized goods dated 09.03.2017</td><td>Seizer refund Rs.15.50 Lacs</td><td rowspan="2">2. Both the SCNs were adjudicated vide O-I-O No.19-20 dated 27.12.2017</td></tr>
<tr><td>(b)</td><td>SCN issued for demand dated 08.05.2017</td><td>Demand Rs.95,59,447/-</td></tr>
<tr><td>50536</td><td colspan="2">SCN No.219 dated 08.05.2017</td><td>Amount of penalty

Rs.1,00,000/-</td><td>O-I-O No. 19-20 dated 27.12.2017</td><td>460-464 dated 01.11.2018</td></tr>
</table>

2. The relevant factual matrix for the purpose of disposal of these appeals is as follows:-

3. M/s. Sona Plastics Udyog, a factory is engaged in the manufacture of various plastic items and has the manufacturing unit in Khasra No.29-30 of Revenue Village, Bhoyatawala at Benad Road in Jaipur, Rajasthan. While acting on an intelligence, Department conducted a search in the premises of M/s. Sona Plastics Udyog/ the appellant on 14.09.2016 in the presence of two independent witnesses and the authorised signatory of the appellant Shri Harphool Singh Jhuria. It was observed that the said

Shri Harphool Singh Jhuria is the Proprietor of M/s. Siddharth Plastoware also which was found functional in the same premises as that of appellant. It was observed that both manufacturing units i.e. M/s. Sona Plastics and M/s.Siddharth Plastoware had a single boundary wall, a single facility for manufacturing of plastic items was found installed and working in the aforesaid premises bearing Kasra No.29-30. A single electricity power connection as obtained from Jaipur Vidhuth Vitharan Nigam Ltd. in the name of the appellant alongwith the common tube well was found existing for both the manufacturer in the given premises. The plastic items as that of Campers, Buckets, Mugs, Lids, Pattas etc. were observed to have been manufactured in the factory situated at the above premises. Department also observed that the records of both the manufacturing units were maintained in one common office existing in the said common premises. There was no segregation of the stock of raw-material or finished goods to indicate that the same belong to more than one business entities and the stock of raw-material were also kept at the common shop floor of the said manufacturing facility.

. During the course of search, Department also recovered some loose slip of papers (Kachchi Parchies) containing details of sale of various products without issuance of invoices. On the basis of stock of raw-material, goods under work in process and finished goods, the Department formed an opinion that the appellant is indulged in clandestine manufacture of excisable goods without obtaining Central Excise Registration and clearance of such goods is without issuance of invoices and without payment of Central Excise Duty. Accordingly, a show cause notice No.2026 dated 09.03.2017 was served upon the appellant proposing confiscation of the seized goods having aggregate value of Rs.1,50,19,496/- with the proposal of penalty upon Shri.Harphool Singh Jhuria, authorised signatory for M/s.Sona Plastics and Shri Suman Jhuria, the Proprietor thereof. Simultaneously, a show cause notice bearing No.219 dated 08.05.2017 was served upon the appellant proposing the demand of Central Excise Duty amounting to Rs.1,05,71,605/- alongwith the interest at the appropriate rate and the proportionate penalty. The said proposal was confirmed vide Order-in-Original as mentioned above. The appeals thereof have been rejected vide the Order under challenge.

4. I have heard Mr. Arun Goyal, ld. Advocate for the appellant and Mr.O.P. Bisht, learned Authorised Representative for the Department.

5. It is submitted on behalf of the appellant that the show cause notice is liable to be set aside for want of non-compliance of the mandatory condition of Section 9 D of Central Excise Act, 1944. It is further submitted that the Department has committed an error while considering two manufacturing units, namely, M/s. Sona Plastics Udyog and M/s.Siddharth Plastoware as one and have wrongly clubbed the clearances of the said two units denying the benefit of SSI unit exemption to both of them. It is submitted that only basis for the Department for considering two units as one is

that both the manufacturing units exist in the same premises, they share the common electricity connection, common staff, the records are maintained in common office existing in the common premises and the storage for raw-material as well as finished goods is also the common space. It is submitted that none of these grounds can be the ground to form an opinion that two distinct manufacturing units are one and the common unit.

6. The observation and allegation of the Department that two different names given are with the intention to wrongly avail the SSI exemption benefit are apparently false. It is submitted that both the manufacturing units have separate registration numbers. M/s. Siddharth Plastoware rather is prior in existence. Though there is common electricity connection but a Sub-meter has been installed in the premises of M/s. Siddharth Plastoware. Both the companies have separate Proprietors. The authorised signatory of one is the Proprietor of another can again not be a ground to hold that two manufacturing units are one nor to club the quantity of manufacture of these two separate units. It is further submitted that the Units otherwise exist in rural area and they are manufacturing different products of though of the same brand called "Siddharth" but with different logo. The Department has failed to take into notice that M/s. Sona Plastics are manufacturing Buckets, Mugs and Pattas under brand name "Siddharth's" with logo "S" in square where as M/s. Siddharth Plastoware was only manufacturing Campers and Lids under the brand-name "Siddharth" with logo "S" in oval. It is also mentioned that the brand-name "Siddharth" was

registered only for water storage tanks and other kinds of plastic tanks with the lids. Rest of the plastic goods i.e. buckets, mugs, pattas etc. were manufactured by the appellant. Machineries for both the kind of manufacture are absolutely different which had been purchased at different point of times. The moulds used for manufacture of final products by both the manufacturing units were also altogether different. Hence, irrespective of whatever commonness observed by the Department clubbing of the clearances of two manufacturing units is absolutely wrong on the part of the Department.

7. With respect to the SCN dated 24.01.2017 qua the rejection of refund, it is submitted that with respect to the proposed demands three Cheques were issued by the appellant with the request to not to en-cash the same till the adjudication. However, one of the Checks amounting to Rs.25.00 Lakhs was got en-cashed. Above all, it is submitted that no SCN has been issued to M/s.Siddharth Plastoware. In absence whereof question of clubbing their clearances to that of M/s. Sona Plastic Udyog i.e. the appellant does not at all arise. The rejection thereof in view of the aforesaid request has been impressed upon as wrong. Resultantly, the order under challenge is prayed to be set aside. Appeals are prayed to be dismissed.

8. While rebutting these submissions, ld. D.R. has submitted that during the course of search on 14.09.2016 at the premises of M/s. Sona Plastics Udyog as many as 55 private handwritten slips (Kachcha Purcies) were found to contain the details of sale by the appellant of their final product to various buyers. Those purchies

pertained to the period 2012-13 to 2016-17 (upto 14.09.2016) which sufficiently showed the quantum of clearances, the actual value thereof and the value charged from the buyers. These documents have rightly been held as a proof for unaccounted goods in the form of raw-material. These were also rightly held to be the evidence about lack in stock of work in progress and also about the finished goods. Impressing upon the order to be justified and justifying the findings about both the manufacturing units otherwise as one to be correct ld. D.R. has prayed for dismissal of impugned appeal.

9. After hearing the parties and perusing the entire record, we observe that findings are two folds thus hold as follows:-

A. Findings with respect to the show cause notice of demand and confiscation:

The adjudicating authority has confirmed the impugned demand on the sole basis that M/s.Siddharth Plastoware is a dummy company formed by Shri. Harphool Singh Jhuria who is the authorised signatory of the appellant and Proprietor of M/s.Siddharth Plastoware and that the Proprietor of the appellant is none but the wife of said Shri Harphool Singh Jhuria. The moot controversy therefore is as to:

> "Whether the blood relation between the Proprietors of two concern and few things to be used commonly by both i.e. the units premises, electricity connection, staff, office and

storage space are sufficient to club the clearances of two manufacturing units or not."

10. To adjudicate upon, we foremost observe that to allege the clandestine removal on part of appellant and to deny them the benefit of exemption, the Department has clubbed the clearance of appellant with another manufacturing unit, namely, M/s.Siddharth Plastoware. Perusal of all SCNs as mentioned above reflects that no SCN has been served upon said M/s.Siddharth Plastoware, though Shri Harphool Singh Jhuria is the Proprietor of the said manufacturing unit and a SCN has been served upon him but not as the Proprietor of M/s.Siddharth Plastoware but as the authorised signatory for the appellant i.e. M/s. Sona Plastics Udyog. Hon'ble High Court of Kolkata in the case of **Commissioner of Central Excise, Kolkata vs. Diamond Scaffolding Co. Reported as 2011 (274) ELT 10 (Cal.)** has held that clubbing of clearances is not sustainable in case no SCN has been issued to the unit whose clearance has been clubbed with the clearance of the assessee. This Tribunal also, the Chennai Bench, in the case of **M/s. Thiraviam Engg. Works vs. CCE, Tirunelveli reported as 2018-TIOL-1930 CESTAT-MAD** has held that when no SCN has been issued to alleged dummy unit same would vitiate the proceeding. The demand cannot sustain for want of SCN to be issued by the Department to the alleged unit whose clearance is proposed to be clubbed with that of the assessee. These adjudications are sufficient for us to hold that the very basis of the demand i.e. the issuance of SCN to the alleged dummy unit as far

as the amount of clearances of M/s.Siddharth Plastoware is concerned is missing in the present case.

11. Coming to the merits of the case, it is foremost necessary to establish as to whether M/s.Siddharth Plastoware is actually a dummy unit of the appellant i.e. whether the two companies have financial dependence or the flow of finances from one concern to the alleged dummy concern Hon'ble High Court of Punjab & Haryana in the case of Commissioner, Central Excise vs. Saron Mechanical Works reported as 2016 (332) ELT 80 (P & H)has held as follows:-

> *"SSI Exemption - Clubbing of clearances cannot be done without declaring one unit as dummy unit - Unit which was already working for almost six to seven years could not be said to be dummy of another unit which is yet to come into existence. It was more so where allegation of clandestine removal of goods and their valuation had not been proved. Mere quoting of statements of proprietors and some of their employees was not enough. Also, use of common electricity connection, accountant, store room for raw materials could not be reason for clubbing clearances of both units when there was no dispute about both units being complete in themselves and manufacturing goods independently of each other."*

12. In the present case we further observe that M/s.Siddharth Plastoware is mentioned to be existing since the year 2005. We observe from the record that the registration certificate as issued in the name of M/s. M/s.Siddharth Plastoware bearing No.08964050405 records the date thereof as 11th February, 2008

with Mr. Harphool Singh Jhuria as the sole Proprietor and the company to exist at Village Martadu Badi, Post Beebeepur, Fatehpur Shekhawati, Sikar, Rajasthan whereas M/s. Sona Plastics Udyog/ the appellant is mentioned to be existing since the year 2009. The registration certificate bears the registration No. as 08574151451 which Smt. Suman Jhuria as the sole Proprietor to exist at 19, Pravasi Nagar, Kedia Palace Road, Murlipura, Jaipur, Rajasthan and the certificate to take effect from 1st January, 2009. The certificate in addition clarifies that M/s.Siddharth Plastoware got itself registered for manufacturing water tank and containers whereas appellant got it registered to manufacture plastic items. The articles intended to be purchased for manufacture of final product of M/s. Siddharth Plastoware are plastic Dana.. master batch, plastic auto moulding, polariser grinder, executed dyes and mould. However, the raw-material to be used by the appellant is plastic granules, plastic items, machinery and tools and packing material. The perusal of both the certificates which are nowhere been denied by the Department clarifies crystally that M/s.Siddharth Plastoware cannot be called as the dummy unit of the appellant as it is existing much prior than the existence of the appellant. Both are manufacturing and clearing altogether different plastic products. The raw-material used for the purpose by both of them is absolutely different. To further elaborate this observation we draw our support from the following case law:-

(i) **Pratap Press vs. Delhi Press Workers Union reported as AIR 1960 (SC) 1231** wherein it was held that two units cannot be considered as forming one industrial unit merely because it is owned by same person. Shri Harphool Singh Jhuria being the common authorised signatory, therefore, cannot be a ground to club the clearances of the factories herein.

(ii) **Spring Fresh Drinks vs. Collector of Central Excise reported as 1991 (54) ELT 333** wherein it has been held that close relationships between the Directors of two units belonging to two limited companies and situated in adjacent plot is not sufficient for clubbing their clearances. The fact that the Proprietor of M/s.Siddharth Plastoware is the husband of Proprietor of appellant and also the authorised signatory for the appellant, therefore, cannot be the ground to club the clearances of the two units herein.

(iii) **Shri Packaging Corporation, Hyderabad vs. Collector of Central Excise, Hyderabad reported as 1987 (32) ELT 94** wherein, it was held that common interest is not established merely because the goods are stored in a common place nor on common employment so long as separate accounts are kept. In the present case, the mere fact is that the office room and the storage room are same for both the units cannot, therefore, be the ground for clubbing the clearances specially when the registration certificates of both the units clarifies that the final product and raw material of two of them is absolutely different.

There is no denial of the Department to the fact that dyes and moulds used by both the units are also altogether different.

13. In addition to the commonness as is alleged, which otherwise stands falsified in view of above discussion, the Department had to prove the mutual financial dependence of M/s.Siddharth Plastoware upon the appellant before alleging the former to be a dummy unit of the later. This Tribunal in the case of M/s. **Jagjeevan Das and Company vs. Collector of Central Excise, Bombay reported in 1985 (19) ELT 441** has held that Department should conclusively prove that the firms were not distinct and separate, before clearances of separate firm can be clubbed together. We draw our support from the another adjudication in the case of **B. Ganapathy Bhandarkar vs. Regional Provident Fund Commissioner reported in 1990 (60) FLR 143** wherein it has been held that unless an interconnection between the two units are established to have mutual financial dependence of one over the other so that one cannot function in the absence of other, two units should be held to be different and distinct. In the present case, department has miserably failed to prove any evidence of proving such interdependence. On the contrary, the above discussion establishes that two units are distinctly and independently were existing irrespective in the same premises and irrespective sharing few things in common as that of office room and storage room.

14. As far as electricity connection is concerned, appellant has submitted about a sub-meter to be installed in the premises of M/s.Siddharth Plastoware. Department despite conducting the physical search of the premises had failed to take note of the same. There is no evidence produced on record to the contrary. There remains no question in the allegation as far as electricity connection is concerned. We also draw our support from the decision of this Tribunal Hyderabad Bench Commissioner of Central Excise, Vishakhapatnam-I vs. M/s. Vizag Poly Packaging Industries reported in 2016- TIOL-2614-CESTAT-Hyd. wherein the case of Renu Tandon vs. Union of India reported in 1993 (66) ELT 375 (Raj.) has been relied upon and it was held that where two units situate at same premises, manufactures similar products and have some common management office labour or even common electricity connection owned by the relatives, but in absence of the evidence of common funding and financial flaw back the said two units cannot be treated as one and thus their clearances cannot be clubbed. Notification No. 175/86 CE dated 01.03.1986 was relied upon.

15. In view of the entire above discussion, we hold that the Department has failed to discharge its burden for proving the financial dependence of M/s.Siddharth Plastoware upon the appellant. They have also failed to prove the final product of two of the units to be common. Thus, we hold that M/s.Siddharth Plastoware is wrongly confirmed to be the dummy of the appellant by the adjudicating authority below. Resultantly, the clubbing of

clearances of two is not sustainable. There is no denial of the Department that individually their clearances are less than 1.5 Crores. Benefit of S.S.I. Exemption, therefore, cannot be denied to them. Otherwise also both the industries fall within the rural area, as is apparent from address that they lie in Khasra No.29 & 30.

B. Findings qua penalty upon Shri Harphool Singh Jhuria and refund of Rs.25.00 Lakhs.

16. Since demand in question is held unsustainable and that the confirmation thereof has been set aside, there can be no sustainability of the penalty upon Shri Harphool Singh Jhuria the appellant in appeal No.50536. The amount of Rs.25 Lakhs as was debited from the appellant’s account due to en-cashing of one of the three cheques issued by the appellant has therefore, to be refunded back to the appellant. The order in original No. 35 of 21.06.2017 rejecting the same is also, therefore, set aside.

17. Resultantly, the orders under challenge are held to have wrong conclusions. Same are hereby set aside.

18. As a result, both these appeals stand allowed.

[Order pronounced in the open Court on 08.01.2020]

(**BIJAY KUMAR)**
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita