

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

(BY VIDEO CONFERENCING)

Excise Appeal No. 50266 of 2019-SM

(Arising out of order in appeal No. 1162(CRM)/ CE/JDR/2018 dated 24.10.2018 passed by the Commissioner (Appeals), Central Excise, Central Goods & Service Tax, Jodhpur).

**Commissioner, Central Excise &
Central Goods & Service Tax,**
142-B, Hiran Magri
Sector-11, Udaipur-313002.

Appellant

VERSUS

M/s Mangalam Cement Limited
P.O. Aditya Nagar, Morak
Kota (Rajasthan).

Respondent

APPEARANCE:

Shri Pradeep Kumar Gupta, Authorised Representative for the appellant
Shri Hemant Bajaj, Advocate for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. 50847/2020

DATE OF HEARING/DECISION: 16.09.2020

ANIL CHOUDHARY:

This appeal by Revenue is a classic example that it does not believe in the 'doctrine of merger' and further strongly believes that the Deputy Commissioner of Central Excise is superior to the Commissioner of Central Excise.

2. The Department is in appeal against the impugned order-in-appeal which is second round of litigation on the issue of allowability of 'common registration' to the respondent manufacturer of cement.

3. The brief facts of the case are that the respondent assessee was allotted a single contiguous piece of land measuring 471 acres by the Government of Rajasthan and commenced manufacturing of cement way back in 1981. The respondent -assessee undertook major expansion by establishing a new grinding unit known as M/s Mangalam Grinding Unit (MGU). The MGU and the manufacturing facilities then existing were not only on the same piece of land, but it was also connected by a private road within its leased land and common boundary wall. Though there was distance of approximately 2 kms. Between the MGU and the then existing manufacturing facilities, however, it was on the same plot and there is no scope of any other third party for entry in between. Though the respondent assessee has a leased common land with common boundary wall, and a proper private road between the two contiguous plots of land, however as the MGU was at a distance of about 2 kms., the respondent-assessee had also installed a dedicated conveyor belt for transport of clinker and cement between the two units. The respondent- assessee had approached the Assistant / Deputy Commissioner, Kota vide their letter dated 15.06.2012 intimating about the Mangalam Grinding Unit (MGU) and a ground plan of the appellant showing the existing manufacturing facilities and also location of the present MGU. The respondent assessee had requested

the Assistant Commissioner for amendment to the existing registration of Central Excise by including the premises of MGU in it. The letter was followed by a formal application dated 30.08.2013 in prescribed form A-1 alongwith the ground plan. The application for amendment was accepted by the Assistant Commissioner and amended registration certificate dated 06.09.2013 was issued to the respondent-assessee. Accordingly, appellant continued working under amended registration and also took eligible credit of capital goods.

4. Thereafter few days the Anti Evasion team visited the premises of the respondent and as per panchnama dated 23.11.2013, in the year 2012 respondent undertook expansion by enhancing clinker production capacity of the unit-I from 5.66 lakh MT to 10.66 lakh MT and have taken and utilised cenvat credit on the capital goods installed by them. They applied for amendment of the existing registration on 05.09.2013 online and on the basis of facts and ground plan submitted the Deputy Commissioner allowed the amendment on 06.09.2013. The new unit which is named M/s Mangalam Grinding Unit is set up about 2 kms. away from the existing unit. Further, cenvat credit of capital goods installed in the new unit was being utilised for the purpose of duty payment on the goods being cleared from the existing unit. As per officers, in the course of inspection, it is found that the new unit is set up on a separate piece of land for which separate clearance from Environment Ministry was sought. The new unit was having its own separate

boundary wall and was approximately 1 km. away from the boundary wall of the existing factory. A colony namely Sarvoday Vihar, Rain Water Drainage, BT Road to the colony and green belt were there in between these two boundaries/ premises. The respondent management informed that there is a proposed elevated conveyor belt which will interlink both the units and thereafter the clinker manufactured at the existing unit would be transferred internally to the new grinding unit, instead of transporting the same through truck(s) as was being done at that time. On being pointed out by the Officers to the respondent that wherever the two units are separated by a road/ canal/ railway line, the jurisdiction lies with the Commissioner of Central Excise. It also appeared to Revenue that process of both the units was still not interlinked, as construction of proposed conveyor belt was to be completed in March, 2014. Further, both the units were having separate boundary wall and there was no possibility of internal movement of the goods, on the date of inspection. Further the revised map submitted by the respondent to the Department did not show any internal gate in the boundary wall. Thus, evidently the clinker manufactured in the existing unit was required to be taken outside the registered factory premises for transfer to the new Mangalam Grinding unit. Further, the amended registration dated 06.09.2013 issued by the Deputy Commissioner have no indication about the new addition in the existing area of the factory premises.

5. The Deputy Commissioner of Kota Division revoked the amendment in the registration certificate without giving any opportunity of hearing to the assessee, vide his order dated 27.11.2013.

6. In the meanwhile, the respondent-assessee by their application dated 22.11.2013 requested the Commissioner of Central Excise for regularisation of their amended registration granted by the Deputy Commissioner in terms of para 3.2 of the CBEC's manual, for common registration. Another letter of even date was filed before the Deputy Commissioner, Central Excise that their application for amendment dated 06.09.2013 be treated as request for the purpose of approval from the Commissioner, for needful.

7. The jurisdictional Commissioner vide communication F. No. V(Tech)30/Reg- Mangalam/101/2013/217-218 dated 31.01.2014 granted single registration for the two premises in terms of para 3.2 of CBEC's Manual of Supplementary Instructions, 2005 read with para 3 of Notification No. 36/2001-CE (NT) dated 26.06.2001, prospectively.

8. The respondent -assessee had in the meanwhile by way of abundant caution filed an appeal before the Commissioner (Appeals), against the revocation order dated 27.11.2013.

9. The Anti Evasion unit continued its investigation and issued show cause notice dated 12.04.2014, which was answerable to Commissioner and in the show cause notice it was proposed that

cenvat credit (on capital goods) of Rs.13,73,91,891/- related to MGU taken during the period April, 2012 to November, 2013 should be reversed by the assessee.

10. Commissioner (Appeals) vide order-in-appeal dated 08.01.2015 had allowed appeal of the appellant in their favour, against revocation order, that is, the order of Deputy Commissioner, Kota dated 27.11.2013, had been set aside and amendment to the Central Excise registration which included MGU was restored.

11. The appellant filed refund claim of Rs. 7,04,29,992/- on 16.02.2015 on the basis of Order-in-Appeal dated 08.01.2015.

12. Being aggrieved with the said order-in-appeal dated 08.01.2015, Revenue filed appeal before the Tribunal.

13. However, in the meantime, the Commissioner adjudicated the show cause notice dated 12.04.2014 vide its order dated 10.07.2015 and held that credit of Rs. 10,86,78,623/- is allowable with effect from 31.01.2014 and service tax credit of Rs. 2,85,82,520/- is irregular and further held that cenvat credit of Rs. 1,30,748/- is irregular towards power generation. However, in concluding para, the entire cenvat credit of Rs. 1,23,91,891/- was disallowed. He also confirmed the duty demand of Rs. 4,20,251/- and interest and amount deposited of Rs. 7,04,29,992/- was appropriated against the said demand.

14. The appellant had challenged the order dated 10.07.2015 of Commissioner, before this Tribunal.

15. Subsequently, the appellant filed another refund claim of Rs.4,14,17,480/- on 06.08.2015 on the basis of Commissioner order dated 01.07.2015 (Rs. 7,00,00,000/- pre-deposit – Rs.2,85,82,520/- disallowed credit).

16. Tribunal vide its Final order dated 06.11.2015 had dismissed the appeal of Revenue against Commissioner (Appeal)'s Order in appeal dated 08.01.2015 for revocation of single registration.

17. Revenue filed appeal against the said Final order of the Tribunal dated 06.11.2015 for revocation of single registration before the Hon'ble High Court of Rajasthan, who vide order dated 25.05.2016 had dismissed appeal of the Revenue, with following observation(s):-

"We do not find any illegality in the orders passed by the Commissioner (Appeals) and the Tribunal. A right was accrued with registration in favour of the assessee. If common registration was to be revoked, nobody prevented the revenue to pass proper order by giving an opportunity of hearing to the assessee. The revenue cannot pass unilateral order without hearing other party. It is more so when allegations have been made for playing fraud on the department.

In view of above, we do not find any substance in the appeal for challenge to the order of the Tribunal so as the Commissioner (Appeals). The appeal is accordingly dismissed. The revenue would, however, be not precluded to take action in the matter but it would be after following principles of natural justice and as per the provisions of law."

18. Pursuant to the aforementioned order of the Hon'ble Rajasthan High Court, the Deputy Commissioner issued show cause notice dated 07.12.2016 to the respondent asking to show cause as to why the amended registration dated 06.09.2013 should not be revoked under the provisions of Rule 9 of Central Excise Rules read with para 3.2 of

CBEC Excise Manual of Supplementary Instructions and Notification No.35/2001-CE. The said show cause notice was adjudicated on contest vide order-in-original dated 29.09.2017, revoked the amendment in registration made on 06.09.2013 by the Assistant Commissioner. The respondent assessee preferred appeal before the Commissioner (Appeals) who has been pleased to allow the appeal by setting aside the order-in-original, with the following observations:-

"5.2. I find that the issue of single registration has already been settled by Hon'ble High Court in favour of appellants hence raising above issue again is totally illegal. I find that the whole issue of amendment in registration has been decided in favour of appellants not only by Commissioner (Appeals) or Tribunal but also by the Hon'ble High Court. Therefore, the exercise of issuing the impugned show cause notice is against settled issue of single registration. I find that this is nothing but a repetition of the same allegations which have been examined in detail by various judicial authorities. I find that the adjudicating authority has relied on the order dated 25.05.2016 of Hon'ble Rajasthan High Court wherein it was mentioned that Revenue would not be precluded to take action in the matter after following the principle of natural justice and accordingly mentioned that these proceedings are in compliance of order dated 25.05.2016. I find that it is settled legal position that once issue has been raised, same issue with a little variation in facts cannot be raised/ litigated again. I find that decision of higher authority is binding on lower authority. I find that after referring the judgment of Hon'ble High Court of Gujarat in the case of E.I. Dupont India Pvt. Ltd., Board vide Circular No. 201/01/2014-CX.6 dated 26.06.2014 clarified that judgment of higher Court needs to be followed scrupulously.

5.3 Even otherwise, I find that as per Rule 9 of Central Excise Rule, 2002, every person, who manufactures excisable goods shall get registered. Further Notification No. 35/2001-CE(NT) dated 26.06.2001, as amended, issued under Rule 9 provides that if a person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises. A perusal of above shows that if there is one premise then only one registration is required. Only if there are more than one premises, separate registration would be required for each of the premises. I find that in the present case the premises in which existing unit and the new grinding unit are situated is only one premise. Both are situated on the same undivided piece of land allotted to the appellants in the year 1978. There is nothing in between blocking the connectivity. During the visit of the officers of anti evasion on 22.11.2013 a Panchnama was prepared and a few photographs were taken. A perusal of panchnama dated 22.11.2013 and the photographs shows that the existing unit and the new grinding unit were already connected with an internal private motorable road and further construction of conveyor system connecting the two was already in progress. Therefore the two units cannot be said to be situated on two different premises. Since there are no two separate premises of existing unit and MGU, there was no legal requirement to take any new registration for MGU."

19. Being aggrieved the Revenue filed the present appeal on the following grounds:-

- i) The Commissioner (Appeals) have erred in not appreciating the observation of the Hon'ble High Court to the fact that Revenue is not precluded from taking action in the matter in accordance with law.
- ii) The Commissioner (Appeals) has erred in holding that the issue stands settled in favour of the assessee by Hon'ble High Court. According to the Department, Hon'ble High Court has directed it to pass an order after giving opportunity of hearing to the assessee and thus there is no illegality in the order-in-original dated 29.09.2017.
- iii) The Commissioner (Appeals) overlooked that respondent assessee got the certificate of registration amended by mis-representing the facts before the Deputy Commissioner.

20. Further, learned Authorised Representative for the Revenue urges -initially, the respondent applied for amendment in registration by mis-representation and after visit by Anti Evasion team, realising their mistake, they immediately applied for issue of common registration before the Commissioner on 22.11.2013.

21. Learned Commissioner vide order dated 31.01.2014 had granted common registration after verifying the fact of completion of construction of interlinking process of the two units through conveyor belt. Thus, admittedly, the two units were not interlinked initially when amendment in registration was applied on 05.09.2013.

22. Further, the jurisdiction lies with the Commissioner of Central Excise for granting common registration where two premises are actually part of the same factory (where process are interlinked) but are segregated for canal / road or railway line.

23. Heard the parties.

24. Learned Authorised Representative for the Revenue reiterates the grounds of appeal and also relies on the order-in-original.

25. Opposing the appeal of Revenue learned Counsel for the respondent –assessee urges that the present proceedings are *ab initio* bad and are hit by 'Doctrine of merger'. Admittedly, when the Revenue raised the controversy in the middle of September, 2013 on the grant of common registration, the respondent-assessee immediately approached the jurisdictional Commissioner by their application dated 22.11.2013 and the learned Commissioner after examining the facts and on being satisfied have been pleased to grant common registration by his communication dated 31.01.2014. Thus, the issue of common registration stood concluded and settled in favour of the respondent-assessee by the order of the superior officer in rank, under the 'doctrine of merger'. Further, the order of revocation of amendment of registration passed by the Deputy Commissioner, also stood concluded in favour of the respondent – assessee by the order dated 25.02.2016 of the Hon'ble High Court of Rajasthan. Thus, the issue of present show cause notice dated 07.12.2016 by the Deputy Commissioner, is hit both by 'doctrine of

merger' and is also hit by 'in subordination' in view of the order of the learned Commissioner dated 31.01.2014 granting common registration.

26. Learned Counsel further states that the Commissioner (Appeals) have granted relief both on merits as well as under the 'doctrine of merger', observing that the issue attained finality. He further relies on the ruling of Madras High Court in the case of **Rajshree Sugars & Chemicals Ltd., -2014 (299) ELT 277 (Mad.)** wherein under similar facts and circumstances where a sugar unit and distillery unit having separate registration certificate but were situated on the same premises under the same management, one single registration was allowed with merger of credit of the two units. The Hon'ble High Court observed as follows:-

"We agree with the contentions made by the Id. Counsel appearing for the assessee. As already seen in the preceding paragraph, the sugar unit and the distillery unit belonged to the self-same management and they are in the same premises. Although there are two units functioning, it is not denied by the Revenue that the resultant molasses from the manufacture of sugar was used by the assessee in the manufacture of denatured Ethyl Alcohol. Although in respect of two activities, it had maintained two accounts, yet, it related to the business of the same assessee in respect of two activities, which are interconnected too. In the circumstances, the assessee decided to go for one registration alone as against two registrations originally taken. This decision was in tune with the management, administration and control of two units under the same head. In the above circumstances, we do not find any logical reason to accept the plea of the Revenue that on the mere taking of a single registration as against the two registrations, there was merger or amalgamation or transfer to hold that the assessee would not be entitled to any credit adjustment on the duty payable on sugar manufactured."

27. Having considered the rival contentions, I find that Revenue have accepted the order dated 31.01.2014 passed by the jurisdictional Commissioner, granting common registration and have not filed any appeal against the same. I further find that the issue of

revocation of amended registration certificate has also attained finality by the order of the Hon'ble Rajasthan High Court in favour of the respondent-assessee. Accordingly, I hold that the present show cause notice - proceeding is hit by both 'doctrine of merger' and also under the 'doctrine of in - subordination'. Accordingly, I find that there is no merit in the appeal of the Revenue. Thus, the appeal is dismissed. The respondent-assessee is entitled to consequential benefits, in accordance with law.

(Operative portion of order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant