TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1271/2008 - EX[DB] WITH E/M/124/2009-EX Date **05/07/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S MET TRADE INDIA LTD.
VILLAGE BHEEL AKABERPUR,G.T.ROAD,
DADRI,DISTT. GAUTAM BUDH NAGAR,(U.P.)

M/S MET TRADE INDIA LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

MISC ORDER NO. 370/2011-EX

I am directed to transmit herewith a certified copy of **Final order No.494/ 2011 EX|DB|** dated 30-6-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult SH. C. HARI SHANKAR, ADV.,
U6, BANK ENCLAVE,
N. DELHI -

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copv
13. Guard file
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 1271 /2008- Ex(BR)
Excise Misc. Application No. 124 /2009- Ex(BR)

[Arising out of Order-in-Original No. 02/Tech/GZB/08 dated 31.3.2008 passed by the Commissioner of Central Excise, Ghaziabad.]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

---

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

---

M/s. Met Trade India Ltd. — Appellant

Vs.

Commissioner of Central Excise
Ghaziabad — Respondent

Appearance:

Shri C.Harishankar, Advocate for the Appellants
Shri Sunil Kumar, DR for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing: 2.6.2011
Date of decision: 30.6.2011

MISC order No. 370/2011-EX

FINAL **ORAL ORDER NO. 494/2011-EX**

Per M. Veeraiyan (for the Bench):

This appeal is directed against order in original No. 02/Tech/GZB/08 dated 31.3.2008 passed by the Commissioner, rejecting the application of the appellants for single registration for their two Units situated across the road.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The appellant M/s. Met Trade India Ltd. (hereinafter, referred to as Met Trade) is having a factory at village Bhil Akbarpur, GT Road, Dadri, Distt. Gautambudh Nagar, UP and engaged in the manufacture of refined lead etc. Another Company M/s. Gupta Pigments and Chemicals Ltd. (hereinafter, referred to as GPCL) was having a unit situated at 138- 139, Main road Gazipur. It is claimed that the Unit of GPCL was situated just opposite to the Met Trade and was also having a Central Excise Registration for manufacture of lead oxides, etc.

b) On 30.3.2006, GPCL sold the plant and machinery to M/s. Met Trade. GPCL also leased out their property at 138-139, Main Road, Gazipur to Met Trade. with effect from 1.4.2006. GPCL surrendered their Central Excise registration on 12.4.2006. Vide letter dated 22.4.2006 Met Trade has undertaken all the Central Excise and Service Tax dues of erstwhile GPCL.

c) Met Trade sought for combined registration of the two Units namely, the original Unit referred to as Unit No.1 and their new Unit, acquired by purchase of plant and machinery and lease of land from GPCL, referred to as Unit 2. They also submitted that the Unit No. 1 will manufacture pure lead starting from lead bearing scrap material. Unit 2 will receive pure lead from Unit 1 and manufacture Lead powder oxides. It is the claim of the appellant that the two Units separated by public road deserves to be given combined registration in the light of Rule 9 of Central Excise Rules read with notification No. 36 /2001 CE (NT) dated 26.6.2001 and in the light of guidelines prescribed by the Board.

d) Commissioner rejected the plea for common registration holding that the process of manufacture of the two Units of appellant company cannot be treated as having interlinkage; that raw materials are not common for the Units; electricity connection is not common; that no documentary evidence regarding common sales tax, common income tax assessment was produced.

4. Learned advocate submits that, by the Misc. application, they wanted to introduce common income tax returns for the year 2007-08 and 2008-09, certificate of sales tax department about common registration and also other documentary evidences to show that the two Units have common work force and management. He also submits that these documents are relevant to determine the disputed issue as per Boards' guidelines. He fairly concedes that these documents could not be produced before the original authority as during the relevant time, these documents were not ready.

5. Considering that the documents sought to be relied upon are relevant for the issues on hand, the application is allowed and the appeal is taken up for final disposal.

6.1 The matter is before the Tribunal for the second time having been remanded to the adjudicating authority vide order of the Tribunal dated 19.7.2007 reported in 2007 (220) ELT 794 (Tri-Delhi). From 1.4.2006. Unit 1 and Unit 2 (erstwhile GPCL) are under the control of Met Trade. Both are manufacturing excisable goods. The Unit 1 is manufacturing pure leads starting from lead bearing scrap material and the same is substantially used as inputs in the Unit No. 2 who manufacture oxides of lead. The appellants claim that they are entitled to common registration whereas Commissioner has held that they cannot be granted common registration.

6.2 The conditions, safeguards and procedures relating to registration is contained in Notification No. 35/2001 CE(NT) dated 21.6.2001 and provision relating to common registration of premises separated by public road, canal are contained in 36/2001 CE)NT) dated 21.65.2001. Both these notification have been issued in terms of Rule 9 of Central Excise Rules, 2001 (presently Rule 9 of Central Excise Rules, 2002).

6.3 The Boards' instructions / guidelines regarding common registration is contained in para 3.2 of the Central Excise Manual which is reproduced below:-

> " Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlinked), but are segregated by public road, canal or railway line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as :
>
> (1) Interlinked process product manufactured / produced in one premises are substantially used in other premises for manufacture of final products.
>
> (2) Large number of raw materials are common and received /proposed to be received commonly for both/ all the premises.
>
> (3) Common electricity supplies.
>
> (4) There is common labour / work force.

(5) Common administration/work management.

(6) Common sales tax registration and assessment

(7) Common Income tax assessment

(8) Any other factor as may be indicative of inter linkage of the manufacturing processes.

This is not an exhaustive list of indicators nor is each indicator necessary in each case. The Commissioner has to decide the issue case by case."

7. Normally two manufacturing units of any manufacturer, (in the present case Ltd. company) are required to take separate registrations in terms of the conditions, safeguards and procedures prescribed in notification No. 35/2001 dated 21.6.2001. However, notification No. 36/2001 provides for relaxations and in certain cases registration is totally exempted and in certain cases common registration is provided for. The Board has given guidelines as to circumstances in which two premises can be treated as part of the same factory. They have prescribed seven different specific indicators and another indicator which is residual in nature. It has also been clarified that the list of 8 are not exhaustive indicators and that it is not as if that every indicator should be necessarily satisfied.

8. In the light of the above, we find that the Commissioner's finding that the two units are not interlinked in the process of manufacture on the ground that what was manufactured in unit 1 is being used in unit 2 is

clearly erroneous and contrary to Board's guidelines. The findings on other parameters were mainly on the ground that the appellant failed to produce the necessary evidence. As submitted by the learned advocate for the appellants, they have since got common income tax returns for 2007-08 and 2008-09 which could not be placed before the original authority when the matter was decided by him. He also submits that other documentary evidence to show that the two units have common work force and management also could not be produced before the Commissioner before the decision was taken by him. On behalf of the appellants, these documents are sought to be placed before the Tribunal. Prima facie these documents disclose lot of substance in the contentions by the appellants. However, we notice that the Commissioner had no occasion to consider these documents. As per Board's guidelines, such common registration requires to be considered on a case to case basis bases on relevant indicators. As the appellants appear to have no opportunity to place all the relevant materials before the lower authority at appropriate time, it would be in the interest of justice to allow such opportunity to the appellants.

9. In view of the above, we deem it appropriate to set aside the order of the Commissioner and remand the matter to the Commissioner. The parties are permitted to produce the evidence they want to rely upon in support of their claim under notification No. 36/2001 read with Boards'

guidelines for common registration. The Commissioner shall decide the matter afresh expeditiously preferably on or before 31st December, 2011. He shall also grant reasonable opportunity of hearing before the decision is taken.

10. Appeal is allowed by way of remand on the above terms. Misc. application is also disposed of.

(Pronounced in the open Court on

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

ss