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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/1939/2011-1941/2011 - EX[DB] Date **03/02/2012**

E/S/2558-2560/2011-SB.

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

To :
M/S CHEMICOS (UNIT OF CHEMICOS UNIVERSAL PVT. LTD.)
4TH KM, VILL-RUKANPUR, SHAMLI ROAD,
MUZAFFAR NAGAR (U.P.)

M/S CHEMICOS (UNIT OF CHEMICOS UNIVERSAL PVT. LTD.) Appellant

Vs

C.C.E. MEERUT I **STAY ORDER NO. 162-164/2012-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/76-78/ 2012 EX|DB|** dated 30-1-12 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. MEERUT I
EXCISE CHOWK.OPPOSITE
CHOUDHARY CHARAN SINGH
UNIVERSITY MANGAL PANDAY
NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY. NEW DELHI-110024
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-3
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 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2

14. M/S MASCOT CHEMICALS,
C-6 INDUSTRIAL AREA, KAIRANA ROAD, SHAMLI ROAD, MUZAFFAR NAGAR (U.P.)

15. SHRI AVDHESH GOPAL AGARWAL, DIRECTOR OF
M/S CHEMICOS (A UNIT OF CHEMICOS UNIVERSAL PVT. LTD. 4TH KM, VILL-RUKANPUR, SHAMLI ROAD, MUZAFFAR NAGAR (U.P.)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:24.01.2011
Date of decision:24.01.2011

Excise Stay No.2558-2560 of 2011 in
Appeals Nos.1939-1941 of 2011

[Arising out of common Order-in-Appeal No.11-17/Commisioner/2011 dated 31.3.2011 passed by the Commissioner of Central Excise, Meerut]

M/s. Chemicos & Ors. — Appellant
M/s. Mascoot Chemicals
Shri Avadesh Gopal Agarwal

Vs.

CCE, Meerut — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by Shri K.K. Anand, Advocate for the appellant.
Rep. by Shri Nitin Pathak, DR for the respondent.

CORAM: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sahab Singh, Member (Judicial)
STAY order No. 162-164/2012-EX (BR)
FINAL Order No. A/76-78/2012-EX(BR)/Dated:24.01.2012

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of dues and penalties, we proceed to decide the appeal itself with the consent of both the sides.

2. After hearing both the sides, we find that the Commissioner has confirmed duty of Rs.44,47,700/- against M/s. Chemicos, M/s. Mascoot Chemicals and Shri Avadesh Gopal jointly ~~in~~ for the financial year 200-2001 to 2003-2004 by clubbing the clearances of the units. M/s. Chemicos and M/s. Mascoot Chemicals were the proprietary units of one Shri Avadesh Gopal Agarwal upto 31.12.2000, w.e.f. 1.1.2001. M/s. Mascoot Chemicals was converted into a partnership firm with Shri Avadesh Gopal Agarwal becoming 40% partner.

3. It is the contention of the ld. Advocate ~~is~~ that the clearances of two independent complete units, one a proprietary unit and other a partnership unit cannot be clubbed unless it is shown that the work of one factory was being done in the another factory. He submits that it is not disputed that both

the factories were complete units and were capable of manufacturing goods independently. However, ld. Advocate submits that prior to 1.1.2001, the two units were the proprietary units of the same manufacturer and as such, the clearances of both the units, if at all are required to be clubbed, only till 31.12.2000 and the duty to be calculated accordingly. However, he assails the said calculation also on the ground of time bar by submitting that the appellants were under bonafide belief that the two units, even though, belonging to the same proprietor, are entitled to avail SSI exemption independently. The alternative submission of the appellant is that the clearances made by M/s. Chemicos to M/s. Mascoot Chemicals are required to be treated as captive consumption, if the two units have to be allowed as one ~~of~~ and the same unit.

4. Countering the arguments ld. DR submits that the Commissioner is not holding the two units to be one and the same unit. It is only the clearances made by both the units, which are required to be clubbed for the purposes of SSI exemption notification. He clarifies that the goods cleared by M/s. Chemicos to M/s. Mascoot Chemicals cannot be held to be captively consumed inasmuch as, admittedly, they left the factory premises of M/s.Chemicos and are not consumed captively in the same premises. In such

a scenario, the quantum of such clearances are not to be excluded for the purposes of arriving at the clearance value.

5. As regarding the clubbing, though ld. Advocate fairly agrees that both the units were complete independent units but submits that prior to 1.1.2001, they belong to the same manufacturer and as such, in terms of the Notification, the clearances are required to be clubbed. As regards limitation, he submits that reiterating the reasoning of the Commissioner that the unit of M/s. Mascoot Chemicals has not taken out the registration, the same amounts to suppression justifying invocation of longer period. He requests to dispose of the appeals on a short point of confirmation of demand jointly and severally against both the units i.e M/s.Chemicos and M/s. Mascoot Chemicals.

6. Without expressing any opinion on the other issues raised by both the sides, it is well settled law that the duty can not be confirmed against the two assessees without arriving at a finding against whom the same is required to be confirmed. Admittedly, both the units cannot be held to be liable for duty demand. The Commissioner is required to make his mind as against which unit the duty is required to be confirmed. As such, on this short ground itself, we set aside the impugned order and remand the matter to the Commissioner for de novo adjudication. Needless to say that the appellant would be given

an opportunity to present their case and it would be open to the Commissioner to deal with each and every aspect independently. The stay petitions as also appeals get disposed of in the above manner.

[Order dictated & pronounced in open court on 24.01.2012]

[Archana Wadhwa]
Member (Judicial)

[Sahab Singh]
Member (Technical)

Ckp.