

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

**Appeals No. E/2485-2488/2011 and
E/747, 748, 746, 343/2012**

(Arising out of Order-in-Original No. 04-07/COMMR/IND/ Ind/2011 dated 31.03.2011 passed by Commissioner of Customs Central Excise & Service Tax (Appeals), Mumbai) Nagpur) Pune I) Nasik) Aurangabad) Goa)

For approval and signature:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Judicial)

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1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: No
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
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**Commissioner of Central Excise,
Indore**

Appellant

Vs.

**Box Packers
Lamicoating Industries
R.R. Sales (Trading Unit)
Sigma Engineering
Q.Pack Industries Ujjain
Ramesh Saboo
Romil Saboo
Ravindra Jain**

Respondent

Appearance:

Shri R.K. Manjhi, AR
Shri K.K. Anand, Advocate

for Revenue
for respondent

CORAM:**Hon'ble Mr. M.V. Ravindran, Member (Judicial)****Hon'ble Mr. V. Padmanabhan, Member (Technical)**

Date of Hearing: 03.03.2017

Date of Decision: 29.03.2017

ORDER NO. FO/52641-52648/2017

Per: M.V. Ravindran

All these appeals are filed by Revenue against order-in-original No. 04-07/COMMR/IND/Ind/2011 dated 31.03.2011.

2. The relevant facts that arise for consideration are respondent No.1, 2, 4 and 5 are engaged in the manufacture of Corrugated Box falling under Central Excise chapter heading 4819 and the goods were exempted till 01.03.2003. Respondent No. 3 is a trader and respondents 6, 7 and 8 are individuals. A search was carried out in the factory and the residential premises of the respondents and documents were retrieved. On going through the documents, Revenue authorities came to a conclusion that the clearances of respondent 1, 2, 4 and 5 needs to be clubbed and duty demanded on respondent No.1 and the exemption notification of small scale industries claimed by respondent No. 2, 4 and 5 needs to be rejected. Department issued four show-cause notices for demand of duty from respondent No.1 after clubbing of the clearances of respondent No.1, 2, 4 and 5. The above show-cause notices were also seeking to impose penalties on respondent No.3, 6, 7 and 8,

and also sought to deny the benefit of notification No. 8/2003 dated 01.03.2003 as amended. All the respondents filed detailed reply along with various annexure challenging the allegations on merits. It was the case of the respondents before the adjudicating authority that respondents 1, 2, 4 and 5 are independent units, they are procuring their own raw materials, working separately having separate plant & machinery, registered with various Government departments like Sales Tax, Income Tax, Service Tax, Property and Professional Tax. The adjudicating authority after following due process of law dropped the proceedings initiated by the said show-cause notices. Revenue is aggrieved by the said order.

3. Learned D.R. takes the bench through the Grounds of Appeal in the appeal memoranda. He submits that the said Grounds of Appeal clearly indicate that clubbing of clearances as proposed by the show-cause notices was correct. We summarize the said grounds of appeal.

(a) that the adjudicating authority have overlooked the major facts/information collected by the departmental officers inasmuch as Shri Ramesh Saboo (proprietor of respondent No.1) is the main architect, the proprietors and partners of other respondent units, their wives are acting as authorized signatory and other relatives and the facts of the case reveal that the main beneficiary is Shri Ramesh Saboo.

(b) There is vast difference in capital investment between the respondents 1,2,4 and 5, yet the turnover is the same for all the units.

(c) The wages and salary expenses of respondent units it is seen the highest expenses are recorded in respect of respondent No.1 account and the similar expenses of other respondent 2, 4 and 5 were almost $1/3^{\text{rd}}$ to $1/5^{\text{th}}$ of the expenses of respondent No.1. Employees of one unit were also found working in other respondent units and it is noticed that they were conversant enough to explain the accounts of units other than the one from which they were drawing their remuneration.

(d) Loan against property of Shri Ramesh Saboo and huge personal loans from the proprietor of respondent No.1 formed the main corpus fund for all the respondent-units. There was free flow of money between the respondent units in the form of advance payments, free raw material and facility of delayed payment against purchases or job work done.

(e) The basic infrastructure for manufacture of corrugated boxes was available only with respondent No.1 and other respondents were getting the work done from the respondent No.1.

(f) Accounts of all 4 respondent units were prepared/maintained centrally in the computer of respondent No.1 which indicates that respondent No.1 had interest in all

the respondent-units and maintain a tight vigil on the turnover of each manufacturing unit.

(g) Shri Ramesh Saboo is the head of the Saboo family and mentor behind creation and managing the business of respondent-units like family business providing financial help, providing orders and providing raw material and even extending manufacturing facility available at respondent No.1's premises.

3.1 It is his further submission as regards the issue of clubbing of clearances of units is concerned, the Hon'ble Apex Court in the case of *Supreme Washers (P) Ltd. – 2003 (151) ELT 14 (S.C.)* has laid down that mutuality of interest is proved when there is common management of the Companies/Firm under one person. In the case in hand Shri Ramesh Saboo is controlling all the activities of the unit/firm and rest of the proprietors/partners such as wife/son/daughter-in-law; **there is common procurement of raw material**, as per the Apex Court, in the instant case raw material was procured by all the respondent-units from M/s. R.R. Sales who is also related to respondent No.1; **there is common use of machinery** this one is also satisfy in the case in hand, the basic infrastructure for manufacture of corrugated boxes was available only with respondent No.1; **there is common marketing arrangement** – as per the Apex Court this needs to be satisfied, in the case in hand corrugated boxes is the common commodity shown to be manufactured by all the respondent-units. The buyers are also

common parties hence there is common marketing arrangement.

He relies upon the following decisions:-

- (a) Alpha Toyo Ltd. – 1994 (71) ELT 689 (Tri.)
- (b) Unique Resin Industries – 1993 (68) ELT 230 (Tri.)
- (c) Sanjay Electrical Works – 2007 (219) ELT 816 (Sett. Comm.)
- (d) M. Gunasekaran – 2010 (253) ELT 632 (Tri. Chennai)
- (e) Navrang Art Printers – 2010 (251) ELT 267 (Tri. Mum)
- (f) Modern Engineering Plastics Pvt. Ltd. – 2009 (243) ELT 289 (Tri. Chennai).

3.2 It is his prayer that in view of various decisions of the Tribunal on similar set of facts, the impugned order be set aside and the appeals be allowed.

4. Learned Counsel appearing on behalf of the respondents would take us through the impugned order and submit that the adjudicating authority has correctly recorded the factual findings as to the clubbing of clearances is not applicable in the case in hand and also recorded the factual findings as to the existence of independent units, separate accounts being maintained etc. On such factual findings, Revenue has not rebutted or adduced any contrary evidence. It is his submission that the Commissioner as adjudicating authority has duly taken note of various documentary evidences which clearly prove that all the units are independent units and these findings are not rebutted by Revenue by any

additional evidences or contrary evidences; all the manufacturing units are owned by different persons and had come into existence at different points of time and were started by the respondents from their own funds; this evidence on record has not been rebutted by Revenue; that all the respondents are independent unit and entitled for the benefit of SSI exemption under notification No.8/2003-CE and there is nothing on record to show that all the manufacturing units were owned or belongs to respondent No.1; that the value of 4 manufacturing units cannot be clubbed and duty be demanded from respondent No.1 unless it is proved that all the 3 units were dummies of respondent No.1 which in the case in hand is incorrect as there is an instance that all the units were having manufacturing premises; that the show-cause notice absolutely adduced no evidence to show that Shri Ramesh Saboo (Proprietor of respondent No.1) had created all other three manufacturing units on paper while it is on record that other 3 units were independent on their own source of funds and different bank accounts; that the allegations of frequent financial transactions between respondent units is also incorrect as the majority of the transactions with respondent No.3 who is a trading unit and in respect of financial transactions, necessary interests were paid as per TDS certificate which is recorded by the adjudicating authority; that despite recording various statements from all the proprietors/partners of other units and respondent No.1 there is nothing on record which comes out that Shri Ramesh Saboo, respondent No.1 has accepted that other 3

manufacturing units are dummy units and there is no inculpatory statements; that there is a difference between the capital investment made by respondent No.1 and other respondents despite the turnover is the same, this allegation is totally incorrect as during some financial year capital investments were made lesser turn over than other units with meager capital investment and the depreciation on the capital goods was done only in their independent units and in the hands of respondent No.1. He would rely upon the decision of the Tribunal in the case of *Unity Industries – 2006 (193) ELT 314* for this proposition that clubbing of clearances cannot be permitted if the units has separate SSI/Central Excise registration, separate balance sheet and located geographically apart. It is his submission that this view of the Tribunal was upheld by the Hon'ble Apex Court as reported at *2007 (209) ELT 9 (S.C.)*. It is his further submission that an identical view has been taken by the Hon'ble High Court of Punjab and Haryana in the case of *Saron Mechanical Works – 2016 (332) ELT 80 (P&H)*. It is his further submission that the Tribunal at Ahmedabad in the case of *Balsara Hygiene Products* was considering a similar issue as reported at *2012 (278) ELT 526* and held in favour of the assessee. It is his submission that Revenue challenged the said decision before the Hon'ble Apex Court in Civil Appeal and the appeal was dismissed on merits. He produces the copy of the same. It is his further submission that the Tribunal in the case of *Poly Printers – 2002 (139) ELT 295 (Tri. – Del)* had taken the same view that clubbing of clearances needs to

be done in a specific way and held against Revenue which was approved by the Apex Court as reported at 2003 (151) ELT A303.

5. After hearing both sides extensively on the appeals filed by Revenue, the issue that falls for consideration of the bench is whether the adjudicating authority was correct in dropping the proceedings initiated by the show-cause notice for clubbing of clearances of respondent No.1 and respondents 2, 4 and 5 and demanding Central Excise duty and also for imposing penalties on other respondents.

5.1 We perused the show-cause notice issued by the authorities and we find that the allegations in the show-cause notice mainly as the ground that all the units were managed, controlled by members of Saboo family; that from the financial transactions there was free flow of the funds among the respondents, 1, 2, 4 and 5 and pattern of working of all the respondents 1,2, 4 and 5 were managed and controlled by members of Saboo family and with any stretch of imagination, the units of the notice No. 1, 2, 4 and 5 cannot be treated as independent units and therefore clearance of all these units needs to be clubbed after denying exemption under Notification No. 8/2003-CE, duty liability needs to be fixed on respondent No.1. The said show-cause notice also seeks explanation from respondent No.3, 6, 7 and 8 why penalty should

not be imposed on them and from respondent 1, 2, 4 and 5 demanding Central Excise duty.

5.2 We find that the adjudicating authority as regards clubbing of clearances, has recorded factual findings from paragraphs 95 to 100 which are summarized as under:-

(a) The allegation in the show-cause notice that the proprietors of respondent No.1, 2, 3, 4 and 5 are staying in the same residential premises and they are close relatives is not determinative of the issue for clubbing of clearances. We find that is correct and to come to such a conclusion the adjudicating authority has considered the Notification 8/2003 in detail and recorded that the said notification nowhere deals with the concept of related persons and definition of related person and is suitable only in determination of the valuation aspect under Section 4 of Central Excise Act, 1944 where concept of related person attains significant importance.

(b) He also recorded that the respondent No.1, 2, 4 and 5 are independent legal entity and manufacturers in their own in form of their own concern. He has also recorded factual finding that respondent No.3 is a dealer having independent and separable legal entity. We agree with the findings recorded by the adjudicating authority that a separable firm is an independent legal identity and cannot be compared with

family and each member of the family has option and constitutional right to run his own independent business.

(c) The adjudicating authority has also recorded that legally individual/separable firms/concerns cannot be held to be synonymous with relative how much close that relation may be. This finding is also correct and dare not rebutted by Revenue in the grounds of appeal by producing any evidence contrary to the facts recorded by the adjudicating authority.

(d) It is also recorded by the adjudicating authority that the show-cause notice discusses about the premises of respondent No.1 and 2 is adjoining to each other hence there is a need of clubbing of clearances. We find that the adjudicating authority has recorded that there is no evidence on record that respondent No.1 and 2 are in fact one and the same and to come to such a conclusion he has placed reliance on the fact that both the units are established in different year; and situated in different sheds allotted by the Director of Industries Centre, Ujjain; that even if they are situated adjoining to each other, the show-cause notice has not brought on record that resources of one unit was utilized by other unit and there is no documentary evidence on record; on the contrary the show-cause notice and panchnamas drawn on 18.01.2008 (on the date of visit by the officers) found that each of the unit was manufacturing their own goods in their own premises with the help of their own resources. We find that these findings based

on the facts as recorded by the adjudicating authority are not contraverted by the Revenue in the grounds of appeal.

(e) The adjudicating authority has correctly come to a conclusion that proposal for clubbing of clearances is erroneous and without any authority of law and we concur with the same. Our views are fortified by the decision of Balsara Hygiene Products (supra) which has been upheld by the Apex Court as cited herein above.

(f) The adjudicating authority has in the impugned order dealt with the allegations as to why the benefit of notification 8/2003 should not be denied to the respondent No. 1, 2, 4 and 5 individually. The finding of the adjudicating authority in this context is from paragraphs 124 onwards to 150. We find that the adjudicating authority has held the benefit of Notification No. 8/2003 is available to all the respondent 1, 2, 4 and 5 after reading the benefit of notification independently. To come to such a conclusion, adjudicating authority in paragraph 137 has recorded as under:-

“137. Noticee No.1 to 8, in support of their contention, in reply to SCN annexed copies of audited accounts which were subject to statutory audit and income tax and other supporting documents to show that:-

- (a) Units are geographically apart, having their own funding and financial arrangement;
- (b) They hold separate SSI registration and are assessed to income tax, sales tax and central excise separately.

- (c) They are purchasing raw material independently and are also selling their goods to various purchasers independently.
- (d) They are maintaining books of accounts separately for purchase and sale of finished goods.
- (e) They are obtaining separate loans and credits from various banks;
- (f) They have filed separate returns regularly to the department.
- (g) They are periodically visited by central excise range staff.
- (h) They are subjected to tax audit under Section 44 of the Income Tax Act and reports are being submitted to Income Tax Department regularly certified by Chartered Accountant.
- (i) They are holding separate licences under the Factories Act.
- (j) They have their own separate machinery, shed, supervisors and own separate labour.”

(g) After reproducing the factual position as hereinabove recorded in para 137, the adjudicating authority has considered various decisions of the Apex Court and the Tribunal as to why respondent 1, 2, 4 and 5 are eligible for the benefit of notification No. 08/2003. He has come to a fair conclusion with a reasoned order as to how the respondents have satisfied the conditions as reproduced herein above in para 137 of the adjudication order. He has recorded the following findings which are vital to the issue as in paragraphs 145, 146 and 147:-

“145. I observed all the units were working separately with separate plant & machinery, separate labour force, separate

energy source and even under separate registration with the department. No mutuality of interest or financial flow-back between the units has been established.

146. I find that there is no evidence led to show that any of the notice is a dummy unit on paper only and regarding the financial flow-back between them. The requisite conditions for clubbing their clearances have not been fulfilled in this case. In the result, the demand of duty and the penalty on the notice is not sustainable. It has been held in a number of decisions that clubbing of production of two units can be done only if one of the units is a dummy of another. It is not in the instant case.

147. The show-cause notice have not denied that the units are having separate machineries, separate income-tax PAN No., separate sales tax, separate professional tax registration, separate workers/staff and separate electricity meters. It is also seen from the panchanama itself that there were separate machinery installed in the factory premises of all the notice and manufacturing activity was going on separately. It is well settled law that the clubbing of clearances, when the two units can establish their independent entity, is not called for. There is nothing on record to show that all the units were not independent and thus not entitled individually to the benefit of Notification No. 8/98."

5.2 The above said factual findings of the adjudicating authority have not been controverted by Revenue in their appeal by way of any contrary evidence and also indicates that the adjudicating authority was correct in coming to a conclusion as to dropping the allegations of the proceedings initiated by the show-cause notice, we are fortified in our views by the decision of the Hon'ble Supreme

Court in the case of *Commissioner of Central Excise v. Sotex – 2007 (209) ELT 9 (S.C.)* and also the Hon'ble High Court of Punjab and Haryana in the case of Saron Mechanical Works (supra). The facts of these cases being more or less the same as were in various judicial pronouncements as cited herein above; we find Revenue's appeals are devoid of merits.

5.3 In the facts and circumstances of this case, we hold that the impugned order is correct and legal and does not suffer from any infirmity. The appeals are rejected.

(Order pronounced in Court on 29.03.2017)

(V. Padmanabhan)
Member (Technical)

(M.V. Ravindran)
Member (Judicial)

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