

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75888 of 2017

(Arising out of Order-in-Original No. 52/Comm/CE/SLG/16-17 dated 08.03.2017 passed by Commissioner of CGST & Central Excise, Siliguri,)

M/s R. K. Steel,

(20B, Industrial Estate, Sevoke Road, Siliguri-734001.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Siliguri,

(C. R. Building, Haren Mukherjee Road, Hakimpura, Siliguri W.B. .)

...Respondent

..

APPEARANCE :

Shri S. P. Siddhanta, Consultant for the Appellant

Shri S. Dey, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

Final Order No...76525/2025

DATE OF HEARING : 08.05.2025

DATE OF PRONOUNCEMENT: 12.06.2025

Per R. Muralidhar :

On the ground that the appellant was manufacturing 'Prefabricated Structure' falling under tariff item No. 9406 00 91 without obtaining CE Registration and clearing the same without payment of Excise Duty, the Revenue officials visited their unit on 07.12.2015. Stock taking of the goods available in the factory premises was taken up. Stocks of various items were seized. After this a detailed investigation was taken up by going through the books of accounts, verification with other firms, whose documents were found in the premises of the appellant, was also conducted. The Show Cause Notice was issued on 17.6.2016, demanding the Excise Duty for the period 2011-12 to 2014-15 [upto September 2015], by invoking the extended period provisions. The SCN also proposed confiscation of the seized goods.

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2. The appellants filed their reply and attended the Personal Hearing. Their main submission was to the count that the classification under CET 94.06 adopted by the Revenue pertains to Prefabricated Buildings, whereas the appellant was manufacturing only steel structural falling under CET 73.08. They had facility only to manufacture the pre-fabricated structurals. They were procuring several items from other vendors, which were procured under proper Sales Tax / VAT payment and were being supplied to the Army along with the pre-fabricated structurals manufactured by the appellant. Unless all these items are assembled together, the product cannot be termed as *Pre-fabricated buildings*. Further, even at the end of the buyer, i.e., the Army, the assembly was done by the army itself, with there being no role of the appellant in assembly at their end. Further they submitted that the turnover of the other parties cannot be treated as the turnover of the appellant to deny the SSI benefit. They are all independent vendors, having separate Income Tax PAN number, VAT number, owner, bank account etc. Hence, their turnover cannot be clubbed with that of the appellant. They cited several case laws in support of their arguments. Finally, they also contested the issue even on account of time bar, since the appellant was registered with VAT Dept., Income Tax Dept and was filing Returns under these provisions. Therefore, the appellant cannot be fastened with the allegation of suppression with an intent to evade, since they were following the same procedure since 1992. After due process, the Adjudicating authority confirmed the demand along with interest and imposed penalty. He also confiscated the seized goods. Being aggrieved, the appellant is before the Tribunal.

3. The Ld. Consultant, appearing on behalf of the appellant, makes the following submissions:

3.1 It has been alleged that the Appellant manufactured and cleared 'Prefabricated Structure' falling under tariff item No. 9406 00 91 of the CETA' 85. The Appellant found after checking of the First Schedule to

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the CETA'85 that tariff item 9406 00 91 has been shown against 'Prefabricated housing material' under 9406 'PREFABRICATED BUILDINGS'. The Note 4 under Chapter 94 of the CETA'85 specifies '4. For the purposes of heading 9406, the expression "prefabricated buildings" means buildings which are finished in the factory or put up as elements, presented together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings.' From the proposed classification of the said goods in the impugned notice, it is clear that the Ld. Commissioner has understood after examination of records and documents including Balance Sheets with Schedules wherein all the machineries have been listed, that the Appellant at best can fabricate some parts of structures by cutting, bending, welding, making holes, grinding and painting but no capability to make other housing materials.

3.2 In spite of clear admission in the impugned notice that the Appellant manufactured and cleared 'Prefabricated Structure', C E duty has been demanded on the entire value of supply of 'Prefabricated Building ' to the Army. Therefore, such a demand contrary to its contents in the notice is bad in law and liable to be set aside *ab initio*. The notice which is void *ab initio* cannot be twisted to make good the notice inasmuch as the demand notice is foundation of any proceedings. The Appellant relies on the decision of the Hon'ble High Court at Calcutta in the case of Kavita Phumbra v. Commissioner of Customs (Port), Calcutta reported in 2012 (276) E.L.T. 37 (Cal.), wherein it has been held that incompetent notice affecting rights of importer had no force in law and any proceeding initiated thereon must be held to have vitiated proceeding itself

3.3 The Appellant as manufacturer of prefabricated structure, not "prefabricated buildings", has produced Chartered Engineer's certificate and also Chartered Accountant's certificate giving details of calculation of value of the prefabricated structure but the Ld. Commissioner has not

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discussed the same while passing the order confirming duty on prefabricated building;

3.4 The appellant relies on the case laws of **ELECON ENGINEERING CO. LTD. Versus COMMISSIONER OF C. EX., CHANDIGARH reported in 2005 (190) E.L.T. 195 (Tri. - Del.)**, upheld by the apex court as reported in *2012 (277) E.L.T. A84 (S.C.)* and **Amiya Corporation Vs. Commissioner of Central Excise, Kolkata-I reported in 1999 (113) E.L.T. 336 (Tribunal)**

3.5 The Appellant draws attention to the copy of the Tender Paper as Annexure – A (Page 153-165 of the 'Paper Book'), sample copy of Quotation paper as Annexure – B (Page 166-168 of the 'Paper Book') to submit that the Army Departments as per their Policy sends Supply Orders giving all details in Appendix A (Page 173-175 of the 'Paper Book') and B (176-178 of the 'Paper Book') with diagram/drawing and with consolidated value which includes Carrying Cost and VAT/CST, sample copy of the Supply Order was enclosed as Annexure – C (Page 169-183 of the 'Paper Book').

3.6 It is also contended that on receipt of the Supply Order, the Appellant sent Bills, Challan, Money Receipt, Copy of VAT/CST Registration Certificate and Sale Tax Clearing certificate with 'User's Manual'(Page 180-183 of the 'Paper Book') , sample copy of the above documents were enclosed as Annexure – D collectively (Page 184-196 of the 'Paper Book').

3.7 To execute the Supply Order, they started sending of different materials described in the Appendix to the Supply Order and other materials in piece meal to the Army Det as indicated in the Supply Order and while sending the goods, they send challans and despatch Book showing description of the goods so sent, sample copy of Challan & Dispatch book are enclosed and marked as Annexure – E (Page 197-244 of the 'Paper Book'). The Store-Keeper of Army Depot on receipt of

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the above material endorsed the challan and Dispatch Book "Received", sample of receipted copies were enclosed as Annexure - F collectively (Page 245-248 of the 'Paper Book').

3.8 On completion of sending of all goods, the above Store Keeper issued one letter (under sealed cover) that all the goods have been received in the Depot and the Appellant took the copy of the letter to the department where the bill has already been submitted to get the payment. Had the above contentions been considered by the Ld. Commissioner with the enclosures, he could have never recorded that the Appellant supplied pre-fabricated building. How can the Appellant be the manufacturer of pre-fabricated building when most of the items are purchased items and supplied as such.

3.9 The Ld. Commissioner has erroneously relied on the decision of MITTAL PIPE MANUFACTURING CO. Versus COMMISSIONER OF C. EX., NEW DELHI reported in 2002 (146) E.L.T. 624 (Tri. - Del.) to observe that Pre-fabricated building could be supplied in knocked down condition and assembled at site of building.

3.10 While relying upon the above case law, the Ld. Commissioner has not considered the contention of the Appellant supported by certificate issued by Chartered Engineer about the capability of the Appellant to manufacture of pre-fabricated building, in CKD/SKD condition in their factory except structure. The prefabricated shelter was not manufactured in the factory of the Appellant as can be observed from the Supply Order with the appendix attached therewith wherein the total value of the shelter has been shown with specific mention of supply of Nuts and Bolts, Vitrified Tiles along with Tiles Cutting Machine, Interlocking Tiles, Non Ceramic Tiles, Table , Chair , Exhaust Fan , MCB , Steel Locker, Cement, Copper wire (for wiring), lamp shed enamel conical, Bulb CFL, PVC Cable 1.5, Pendant Holder, PVC Conduit pipe , PVC Tee, Round Block, Urinal POT, Lightening Conductor, Sintex

Tank, Soap Places, Stainless Steel Shrink etc. which are all purchased items and supplied in piecemeal basis.

3.11 The Appellant requested one Chartered Engineer, Mr Dipak Kumar Chakrabarti having Registration No C.E. (I) No.112052/7,F.I.V.No.16844 to visit the factory of the Appellant. He visited the factory of the Appellant on 15-11-2016 and verified the Machinery listed in the Schedule of Balance Sheet and has issued a certificate showing the Number of Machines with use. He has also checked all the Supply Orders with appendix A and B from different parties for supply of Pre-fabricated shelter via-a-vis the estimation of each order. He has been also pleased to certify that the structural parts are manufactured according to the specification given by the parties and the said parts and the purchase item are supplied to the parties. The said parties install Pre-fabricated shelters after using the structural parts with supplied items at site as per Instruction enclosed "User Hand Book of the Appellant". He has prepared part A for fabrication portion and part B for trading portion, which has been enclosed.

3.12 From the above certificate it could be seen that the Machineries are capable of use for cutting, jointing by welding, finishing, making holes, painting and bending. Therefore, from the function of the machine, it is clear that the Appellant is engaged in making of some shapes of structure for use in erection/installation of Pre-fabricated structures at site but is not competent to manufacture the Pre-fabricated building.

3.13 Sri Atul Krishna Agarwal, Charter Accountant, Membership No 304982 on 14-12-2016, has issued a certificate to certify the statement showing sale of manufacture goods, trading goods, job work, carriage , VAT/CST and total bill value etc.

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3.14 To charge Central Excise Duty, the item has to be manufactured first as goods, may be bought out, and then if it is supplied in CKD/SKD condition, then the valuation has to be done for the entire goods, which is not the case here. The supply order contains two appendix and the Appellant supplied goods as per appendix with user's Manual even not sent to the site. The pre-fabricated building came into existence at site when the Army erected the same at site where the Appellant have no role to play. In such circumstances, how the Appellant can be treated as manufacturer of pre-fabricated building

3.15 The Dept has the added the value of the turnover of several other units, whose documents were found within the premises of the appellant. The cause of these documents being found in the appellant's premises has been explained in the reply to SCN. But still, the turnovers of these firms have been added to the turnover of the appellant to hold that the appellant has exceeded the SSI limit.

3.16 The Revenue has not brought in any evidence that all the units are related to the appellants. They are different proprietorship firms with separate Income Tax PAN numbers, Sales Tax VAT number, separate office premises, with separate Bank account numbers. Admittedly even if the goods have been bought by the appellant from these firms, their turnover cannot be added to the turnover of the appellant, unless it is proved beyond doubt that all the firms are operated only by the appellant, the Dept cannot add the turnover only based on presumption. The other firms have not been made a noticee in the present proceedings. Thus, while their independent statements have been recorded about their activities, they have never been given any opportunity to reply to the allegation that they are part of the present appellant. On this ground itself, it is submitted, that the Dept is in error in adding their turnover for denying the SSI benefit as well as to enhance the demand in the present notice.

3.17 Coming to the seizure and confiscation, the goods in question were VAT paid inputs. Apart from this, even the semi-finished goods have been seized. They are not completely manufactured goods. There is no provision to seize the goods on the presumption that they are likely to be cleared without payment of Excise Duty, when the goods are very much within the factory premises. Therefore, it is prayed that the confiscation may be set aside.

3.18 The Appellant contended, that it being a small entrepreneur is of the bona fide belief that mere bending, cutting, welding, making holes, finishing and painting of materials of iron and steel according to drawing is not a process of manufacture. The bona fide belief finds support from different decisions of the judicial fora including apex court. In the instant case, even the above process is treated as manufacture then the Appellant would be manufacturer of pre-fabricated structure, as clearly stated in the impugned notice. It cannot be treated as manufacturer of pre-fabricated building. Therefore, the demand of Central Excise duty should have been raised for non-payment of duty on pre-fabricated structure not on the value of pre-fabricated building. It is no longer *res integra* that in case of manufacture /classification dispute, the demand for the extended period is not invocable.

3.19 In the instant case the demand notice has been served on **17.06.2016** charging duty for the period from 2011-12 to 2015-16 (up to September, 2015) and so the demand for the extended period is barred by limitation. Even demand for the month of April, 2011 is beyond the period of five years.

3.20 Also in the instant case, dispute is related to valuation of the said goods as to whether value of the trading goods and the turnover of the other vendors can be included for charging Central Excise duty. The Appellant was of the bona fide belief that Central Excise duty is chargeable on manufacture, not on trading activities and so no duty is

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payable on the value of the traded goods. In case of dispute of valuation, the demand for the extended period is not invocable.

3.21 The Appellant relied on the following decisions :

(i) Commissioner of C. Ex., Mumbai-II Vs. Supreme Petrochem Ltd. reported in 2010(261) E.L.T. 865, wherein relying on the decisions of the apex court in the case of Jaiprakash Industries Ltd. v. Commissioner — 2002 (146) [E.L.T.](#) 481 (S.C.) and Continental Foundation Jt. Venture v. Commissioner — 2007 (216) [E.L.T.](#) 177 (S.C.), held the following:-

"Demand - Limitation - Suppression of facts - Bona fide belief - Supreme Court held that cost of loading of goods within factory was to be included in assessable value of goods - Different Benches of Tribunal consistently held that said decision of Apex Court was not applicable where cost of loading was incurred by buyer - Claim of bona fide belief acceptable - Assessee's belief stands corrected only with the decision of Larger Bench - Extended period of limitation not invocable - Section 11A of Central Excise Act, 1944";

(ii) INDOFIL CHEMICALS CO. Vs. COMMISSIONER OF CENTRAL EXCISE, THANE-I reported 2016 (333) E.L.T. 115 (Tri. - Mumbai)

(iii) KRAP CHEM P. LTD. Vs. COMM. OF C. EX. & SERVICE TAX, DAMAN, RAJKOT reported 2015 (325) E.L.T. 339 (Tri. - LB)

(iv) BLUE STAR LTD. Vs. UNION OF INDIA reported in 2015 (322) E.L.T. 820 (SC)

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(v) Vaspar Concepts Pvt. Ltd. Vs. Commissioner of C. Ex., Bangalore reported in 2006(199) E.L.T. 711(Tri.- Bang.)

4. Based on the above submissions, the Ld Consultant prays that confirmed demand may be set aside both on account of merits and on account of time bar.

5. The Ld A R Appearing on behalf of the Revenue, submits that the appellant has been manufacturing and clearing Pre-fabricated buildings, which are supplied in a CKD condition to the army. While he may be manufacturing the structural, he is buying the other items which are required to complete the pre-fabricated building and sending to the army. Therefore, it is correctly held that the appellant in the guise of supplying pre-fabricated structurals, was in fact supplying the entire pre-fabricated building to the Army and thus evading payment of Excise Duty. They have been buying the goods from the related parties like son, brother-in-law and sister-in-law etc, who were running individual proprietorship firms, but were all under the control of the appellant only. Hence, he justifies the addition of the turnover of these firms with that of the appellant to deny the SSI benefit as also to demand the Excise Duty. He submits that only account of details verification of the accounts of appellant and investigation involving all the firms, the fact of evasion of Excise Duty has come to light. Hence, he submits that the extended period has been correctly invoked. He reiterates the detailed findings of the Adjudicating authority and prays that the appeal may be dismissed.

6. In this case, the appellant's claims are basically:

(a) They are SSI Unit operating within the limits set therein

(b) They are manufacturers of the pre-fabricated Structures only, which are classifiable under CET 73.08 and not pre-fabricated

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buildings falling under CET 94.06 as is taken by the Dept. Mostly these are sold to Army known as Part A of the Contract awarded by them.

(c) Apart from manufacturing the Structures falling under CET 73.08 within the SSI limit, thereby not paying the Excise Duty, they are also taking up trading activities.

(d) They buy the goods from third parties and sell the same, thereby undertaking trading activity on which no Excise Duty is required to be paid.

(e) The items procured from the third parties are also sold to their buyers like Army, who is buying the Structures from the appellant. This forms Part B of the contract awarded by the Army.

(f) The Army after procuring materials under Part A and Part B, gets the assembly done at their end. The appellant has no role to assemble the same at the site of the Army. The army may use many more items in order to build the sheds, apart from the items supplied by the appellant under Part A and Part B.

7. In the course of the arguments, specific queries were raised by the Bench to the appellant as to whether the goods / items under Part B are such that the same cannot be procured by Army from other vendors / from open market, or the items in question are such that only the appellant can supply these items which would be compatible with Part A (Structures) supplied by the appellants.

8. The Ld. Consultant submitted that the Part B items are general items and can be procured by the Army from any vendor who is dealing in such items. These items are not special type of goods being supplied as a monopoly by the appellant. Part A goods can be used and with help of

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procurement of Part B items from various vendors, Army would be able to assemble the Shed at their end. Therefore, there is no compulsion that the Part B items should be procured from the appellant. The army is placing the order of Part B items on the appellant purely because of their convenience.

9. On a query from the Bench about the procurement of Part B items by appellant from various firms, which are said to be related parties, the appellant submits that these are proprietary firms, owned by individuals, who are not related to the appellant companies. They have their own PAN, VAT numbers for carrying on their business. The appellant has buyer – seller relationship with them. Further some of the firms are directly processing the orders and supplying to army. All the transactions are properly recorded by way of VAT paid invoices and accounted for by the appellant as well as the Vendors. The Vendors are assessed in their own capacity by the VAT authorities and Income Tax Authorities. It is submitted that in spite of such clear documentary evidence brought in, the Dept. has taken the turnover of the other Vendor firms, added the same to the turnover of the appellant and denied the SSI benefit and also demanded the Excise Duty on the total turnover consisting of the turnover of the appellant and that of the Vendor firms.

10. The Bench queried the Ld A R representing the Revenue, as to whether the Vendor firms, whose turnover is being sought to be added to the turnover of the appellant, have been made co-noticees for their alleged abetment in the alleged contraventions by the appellant. He submits that Individual Statements under Section 14 of the CEA 1944 was recorded by these firms. They have provided the details of their P & L accounts and Balance Sheets for the period under consideration. Based on the same, the turnovers of these firms have been added to the turnover of the appellant. After this, it is found that when the turnovers are added together, the appellant would go out of SSI

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scheme. Accordingly, the Show Cause Notice has been issued to the appellant for non-payment of the Excise Duty even after exceeding the SSI limit and also for non-payment of the Excise Duty on the full value of the Pre-fabricated structures. He submits that the vendor firms have not been made co-noticee in the present proceedings.

11. In view of the above discussions and submissions, we first take up the issue of adding of the turnover of the Vendor firms (*related firms* as per Revenue) with that of the turnover of appellant.

12. From the SCN and quantification sheets placed at Table-I, II and III, as given at Para 4.1, 4.5 and 4.6 of the SCN, it seen that the quantification is based on account of **adding of the turnover of the 'Firms of Relatives'**. These Tables from the SCN are extracted below for ready reference:

DUTY LIABILITYCALCULATION

The calculation of the duty liability for the year 2011-12 to 2015-16 (up to Sept-15) was undertaken based on the Statistical data as per Schedule A supra, Accordingly, the aggregate value of the finished goods manufactured and cleared by the said assessee for 2011-12 to 2015-16 (Up to September 2015) was as per the **Table –I** hereunder:-

AGGREGATE VALUE OF CLEARANCES (TABLE-I)

YEAR	As per received From Army Authorities (Bill Details, invoice & Supply order)	As per the invoice /supply order seized/submitted (Related Firms)	As per invoice Seized/Submitted (R.K.Steel)	As per Balance Sheet	As per Sales Tax return
1	2	3	4	5	6
2011-12	27571339	20462260	No invoices Recovered during search	46013235	46029435

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2012-13	19053507	-	Do-	22357221	22317221
2013-14	35955069	8275300	35871544	34684032	-
2014-15	50631231	32573800	48557434	50566024	50566023
2015-1 (Up to Sep 15	11235360	-	-	-	10754754

Table: - II

Total amount of sale	Trading activity	Amount related With Pre-fabrication	Amount of supply order received by relative firms	Total
A	B	C	D	C+D
Rs.42300564	Rs.6515067	Rs.35785497	Rs.1,78,57,100	Rs.5,36,42,597

Now, on the basis of the data reflected in Table-I above, the total aggregate value of clearance of the said assessee taking into account the total sales value affected to different regiments of the army and the total sales value in lieu of manufacture and subsequent sales by the firms of relatives of the said assessee for the period 2011-12 to 2015-16 is as given in **Table-III** herein below.

TOTAL VALUE OF CLEARANCES (TABLE-III)

Aggregate Value of Clearance (as per Balance Sheet and Firms of Relative) Table-I above	PERIOD				2015- 16(up to Sep'15
	2011-12	2012-13	2013-14	2014-15	
BALANCE SHEET	46013235	22357221	34684032	50566024	-
VAT Return	-	-	-	-	10754754
FIRM OF RELATIVES	20462260	-	8275300	32573800	-
TOTAL	66475495	22357221	42959332	83139824	10754754

13. On going through the reply to SCN filed by the appellant and recorded at Para 4.9 (a) to (e) of the Order in Original, it is seen that in respect of Laxmi Industries, the same is owned by Sarita Sharma with her own PAN number. M/s KK Enterprises is owned by Kunal Krishan Sharma, with its own PAN number BAAPS76006R, VAT Registration 19897635027 dt 23.03.2007, Bank Account number etc. As per SCN Para 2.19 he has supplied pre-fabricated item and steel items to various parties and army by purchasing the raw materials in the open market

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and undertaking necessary work. He explained that since the common advocate was filing the Returns, probably their documents would have been found in the premises of the appellant. In case of Daga Enterprise, it is owned by Smt Kanti Sharma, with PAN number AIKPS4211M, VAT number 19897636094 dt 23.03.2007, Bank Account etc. They have stated that they have received contract from Defence Dept for supply of pre-fabricated iron and steel items and payments have been received through bank cheques. In case of R K Steel Engg Works, it has its own PAN No.AVRPS6893H and VAT number 1989587038 dt 6.5.2005 and Bank account. They are into trading and not into any pre-fabricated items manufacture. The proprietor submitted that since the appellant firm belongs to his father, the documents of RK Steel Engg works were kept in the appellant's place. In case of Prabhu Dayal, it is HUF run by Raj Kumar Sharma, with PAN No.AAJHR2753L, VAT number 1989165780 etc.

14. Thus, it is clear that these are individual firms supplying to army directly or some Part B items to the appellant on payment of VAT. Since these firms / owners are liable for assessments under VAT and Income Tax individually, it cannot be presumed that they are dummies / shell firms. The recordings of these firms extracted in the SCN, clarifies that they have always taken the stand of their independent working. Even in the reply filed by the appellant, they have explained the factual details of these firms. In case the Revenue takes a view that they are dummy / shell firms of the appellant, they have to be necessarily put to notice alleging that they are dummy / shell firms, whose finances and other managerial control vests with the appellant. This has not been done by the Revenue since these firms have not been made co-noticees answerable to the allegations by the Revenue. Considering the fact that none of the firms in their recorded statements have agreed to the view of the Revenue about their turnover being part of the turnover of the appellant, non-serving of the SCN to these firms making them the co-

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noticees, by itself would prove to be fatal to the Revenue's case as is being discussed in the coming paragraphs.

15. Even before going into the issue as to whether the finished goods are classifiable under CET 73.08 as claimed by the appellant or under CET 94.06 as has been held by the Revenue, the method of quantification of the demand is required to be looked into in view of our observations at Para 11 to 14 above.

16. In the normal course, the demand should have been raised based on the value of the Pre-fabricated Structurals manufactured by the appellant plus the value of other items [Part B] supplied by the appellant by purchasing the same from the Vendors. Dept can certainly take a stand that the value of such purchase is to be added to sale value of the structures to arrive at the actual value of the pre-fabricated building for quantifying the demand. Once, the demand is quantified under this method, then it would be for the appellant to come out with his response as to why the turnover of the structures should not be added with the supply value of the other items by the appellant himself. But in the present case, the quantification is not under this method.

17. We find that a strange and peculiar method has been adopted by the Revenue as can be seen from the Table I, II and III extracted from the SCN reproduced at para 12 above. The Dept. has directly added the turnover of the other '*related parties*' to the clearance value of the appellant to quantify the demand. It is on record that the firms are owned by some individuals, who though may be related to the appellants, would be still be treated as independent firms based on account of their VAT and Income Tax Registrations. These firms would be responsible for payment of VAT and Income Tax on their turnover. Even if blood-relationship is established, but still on its own, it cannot be the ground to add their turnover to the turnover of the appellant. The Revenue has to prove that there is a mutuality of interest between all the '*related firms*' in question. In none of the statements recorded,

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there is any whisper about the flow back of consideration or mutuality of interest. The SCN does not explain as to how the appellant was the sole beneficiary of the contracts executed independently by some of the '*related firms*' in question. By a simple allegation that that they are '*related firm*', based purely on presumption, Revenue cannot add the turnover, by blatantly disregarding the principles of natural justice by not putting the other '*related firms*' to notice.

18. The Hon'ble Calcutta High Court in the case of **CCE, Kolkata-II v Diamond Scaffolding Company [2011(274) E.L.T 10 (Cal)]**, has held as under:

8. In respect of the second point, i.e., clubbing of clearance, the Tribunal further came to the conclusion that clearances of two other units were clubbed with the clearance made by the importer without issuing any show cause notice to the other units and there was no notice to the two units for clubbing clearance with the clearance of the importer. In such circumstances, in our opinion, the Tribunal was quite justified in holding that demand by clubbing the clearance of other units without issuing any show cause notice was not sustainable.

9. We, thus, find that no substance question of law is involved and consequently, we summarily dismiss this appeal.

19. The Hon'ble Supreme Court in **CCE Jaipur Vs Electro Mechanical Engg Corp – 2008 (229) ELT 321 (SC)**, has held as under:

10 The case of the Department is that these firms have been clubbed together as certain employees of the three firms were common or that their premises were adjoining each other. The Tribunal, while setting aside the order of the Commissioner, has held that there is no evidence on record to prove that there was mutuality of business interest or there was flow back of funds from one unit to another. The finding recorded by the Tribunal, being a finding of fact,

does not call for any interference.

20. In the case of **GHAZIABAD ORGANICS LTD. Vs COMMISSIONER OF C. EX., GHAZIABAD – 2016 (344) ELT 965 (All)** , the Hon'ble Allahabad High Court has held as under :

9. There is no ban on the existence of more than one unit in a compound. Likewise, commonality of directors with stake in these several units is again not conclusive proof of mutuality of interest. Supply of goods from one to another, and even occasional financial accommodation, are not unusual features of business activities. Nor can common supervisory system be designated as out of the ordinary.

10. Both the lower authorities have, while concurring that each of these is not sufficient evidence to enable clubbing, held that the totality of circumstances would justify denial of small scale exemption to both units.

12. The findings suffer from the frailty that characteristics the show-cause notices themselves. The notices are ambivalent in crystallising the duty liability that arises. Computation of clearances is not apparent and there is nothing to support the duty computation or the inferences leading to it. The lower authorities have not elaborated upon the allegations that are sketchy in themselves and not appear to have made any attempt to elaborate upon the manner in which duty liability has been arrived at.

13. The proceedings themselves are, consequently, not bereft of the same frailty. Crucial in any proceedings for clubbing is the existence of a principal and a dummy or dummies. The purpose of clubbing is to deny the independent existence of one or more entities on the ground that the subterfuge of physical segregation is intended to avail the benefit of small scale exemption. Consequently, only one of the entities proposed to be clubbed is to bear the burden of duties sought

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to be evaded thus. No evidence to fasten these roles on either of the two appellants has been brought put in the notices. The decision to issue two notices followed by two independent proceedings highlight the lack of any investigation in that direction. Furthermore, even after finding reasons to club clearances of the two units, duty liability arises on the clubbed value of clearances to the extent that it exceeds the threshold prescribed for small scale exemption. The failure to identify the principal entity has, therefore, led to denial of this threshold exemption.

14. It would, therefore, render the entire proceedings from issue of notice till the impugned order to be tainted by lack of application of mind.

21. We find that the ratio of the above cited decisions of the Kolkata High Court, Supreme Court and Allahabad High Court are squarely applicable to the facts of the present case. The entire proceedings have been vitiated by non-issuing of SCN to the so called '*related parties*' and non-proving of the mutuality of interest between them. Therefore, we have no hesitation in following the ratio of the discussed case laws, to set aside the confirmed demands on this ground itself.

22. Since elaborate arguments have been made by both the sides on the classification of the goods in question and duty liability thereon, we have also taken up the same. It would be important to go through the Central Excise Tariff of the two Headings being canvassed by the Revenue and the Appellant. They are extracted below :

Revenue's Classification :**"94.06 - PREFABRICATED BUILDINGS**

This heading covers prefabricated building also known as "industrialised buildings" of all materials.

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These buildings, which can be designed for a variety of uses, such as housing, worksite accommodation, offices, schools, shops, sheds, garages and greenhouse are generally presented in the form of :

- complete buildings, fully assembled, ready for use;
- complete buildings, unassembled;
- incomplete buildings, whether or not assembled having the essential character of prefabricated buildings.

In the case of buildings presented unassembled, the necessary elements may be presented partially assembled (for example, walls, trusses) or cut to size (beams, joists, in particular) or, in some cases in indeterminate or random lengths for cutting on the site (sills, insulation, etc.).

The buildings of this heading may or may not be equipped. However, only built in equipment normally supplied is to be classified with the buildings. This includes electrical fittings (wiring, sockets, switches, circuit breakers, bells, etc.), heating and air conditioning equipment (boilers, radiators, air conditioners, etc.), sanitary equipment (baths, showers, water heaters, etc.), kitchen equipment (sinks, hoods, cookers, etc.) and items of furniture which are built in or designed to be built in (cupboards, etc.).

Material for the assembly or finishing of prefabricated buildings (e.g. nails, glues, plaster, mortar, electric wire and cables, tubes and pipes, paints, wallpaper, carpeting) is to be classified with the buildings, provided it is presented there with in appropriate quantities.

Presented separately, parts of buildings and equipment whether or not identifiable as intended for these buildings, are excluded from the heading and are in all cases classified in their own appropriate headings."

As per the appellant :

C T H : 73.08:

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Structures (excluding pre-fabricated buildings of Heading No. 94.06) and parts of structures (for example, bridges and bridge-section, lock-gates, towers, lattice masts, roofs, roofing frame works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel.

23. A careful reading of the above two CETs would clarify that mere structures, would get classified under CET 73.08. However, if they are 'complete buildings' in assembled or in unassembled condition, the same would be classifiable under CET 94.06. In order to prove that the goods cleared by the appellants are CKD of the pre-fabricated building, the Revenue should come out with evidence that the goods supplied under Part A and Part B put together would form part of the building. In the present case, the appellant has brought in the evidence to the effect that they have facility to only fabricate structures. In order to prove that they would become pre-fabricated buildings, proper evidence has to be brought in by Revenue to show that the other items supplied by the appellant are essential to bring in the building into being. In the proceedings, there is nothing to indicate that mere adding of Part A and Part B itself, the pre-fabricated building would come into existence, or some more items are required to be added at the end of the Army. The appellant has also submitted that they are not undertaking the assembly at the end of the buyer, i.e., Army.

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24. A sample copy of the Supply Order dated 26.10.2013 is extracted below:

Industrial Estate
Plot No. 20B,
Savoke Road,
Siliguri

SUPPLY ORDER

Dear Sir,

I wish to inform you that your quotation No Nil dt 14 Oct 2013 received against our enquiry No 7270/16/OPW dt 27 Sep 2013, for stores as per schedule below has been accepted to the extent as shown against each with terms and conditions, tech Specification & drgs given at the Appendix A & B attached :-

Ser No	Description of stores	A/U	Qty	Rate Incl VAT per items (in ₹)	Amount (in ₹)
1	20 MEN CHAKOE (Job No 0548C) The prefabricated shelters are to be fabricated out of 38 sqmm MS structural hollow sections. The ruling dimensions of the prefabricated structure are 14000x4000x2500mm as per schedule of structure and as per drg att. The side walls and roofing is provided in the form of hollow panels fabricated out of galvanized plain sheets of 22G and filled with 40mm thick 40 Kg/m ³ density PUF insulation. Brief technical specification, drawings and details of all items & material reqd for one shelter are given in Appendix 'B'. Store list for one shelter is given as Annexure – I	Nos	04	8,86,000.00	35,44,000.00
Total ₹					35,44,000.00
(Rupees Thirty five lacs forty four thousand only)					

Place of Delivery :- Engineer Store Det, Savoke Road, Siliguri.

SO Accepted with all terms and Conditions

Encl - (As above)

CERTIFY TO BE TRUE COPY

R. K. STEEL

Proprietor

Copy to :-

HQ 33 Corps
Engg Branch
PIN – 708533

Yours faithfully,

(SK Ghosh)
Colonel
Commanding Officer

DEBITED TO CODE HEAD 902/54

Job No	Amount	Total
0548C	35,44,000.00	35,44,000.00

STORE LIST FOR ONE 20 MEN CHAKDE			
Ser No	Description of stores	U/L	Qty
1	Prefab structure of size 14000 x 4000 x 2500 mm for Chakde 20 Men as per tech specification. MS work shall conform to IS-800	Set	01
2	Cement PPC/OPC 53 grade in poly bag of 50 Kg each Make: "ACC/ Ambuja/ India Cement/ Birla/ Ultra Tech/ Lafarge"	Bags	80
3	PCC hollow block 400x200x200mm minimum strength 50KG/5sqm. PCC shall conform to IS-456	Nos	1025
4	Non skid ceramic tiles of size 300x300x7mm Make: Somany/ Bell/ Kajaria/ Johnson/ Orient/ Nitco	Nos	700
5	50mm thick Zig zag inter locking coloured tiles of size 140 mm x 200 mm as per sample approved.	Nos	600
6	White Cement of make ACC/ Ambuja/ Birla/ Shree Ultra/ JK White	Kgs	2
7	Paint synthetic enamel 1st quality White Asian-Apcolite/ Berger-Luxol/ Shalimar-Superlac/Nerolac - Goodlass	Ltrs	12
8	Paint synthetic enamel 1st quality OG Asian-Apcolite/ Berger-Luxol/ Shalimar-Superlac/Nerolac - Goodlass	Ltrs	14
9	Red Lead Primer Make "Asian (Apcolite)/ Berger/ Shalimar.	Ltrs	5
10	Thinner Nitro Cellulose of Make Asian/ Nerolac/ Berger/ Shalimar	Ltrs	5
11	Prefab double folding sleeping bunks with cushion of density 24 Kg/ Cum, 35mm thick (Foam Sleepwell) with high end cloth cover. MS work shall conform to IS-800.	Set	10
12	Steel lockers with two locking arrangements of size 5'x3'x19" Make "Godraj" Steel work shall conform to IS-800	Nos	10
13	Water proofing compound Make "CICA/ CICO/ Fosroc	Kgs	7
14	Quick setting compound Make "Accelerex/ CICO/ CICA	Kgs	80
15	Septic tank cover made of ISA and PGI sheet. MS work shall conform to IS-800.	Nos	1
16	Soakage pit cover made of ISA and PGI sheet. MS work shall conform to IS-800.	Nos	1
17	PVC pipe 8" dia, 20' long Make "Supreme/Kissan/Finolex"	Nos	1
Elect Items			
18	Wire flexible 23/0.0076 (flexible cords for pendent light points) twin core, copper conductor IS 9968 (Part-I) 1968 Make Plaza/ Finolex/ Havells/ Anchor/ Polycab/ Rallison.	Mtr	10
19	Bulb CFL 20 Watt cool day light suitable for domestic lamp holder Make "Philips/Havells/CG/BAJAJ/Anchor/ HPL/GE"	Nos	10
20	Tube light fitting patti type 4' long complete with electronic choke, bipin holder with pre wired including 40W tube rod Make "Philips/ Bajaj/ CG/GE/Anchor.	Nos	04
21	PVC Aluminium Cable conductor served with inner sheathing of PVC tape armoured with galvanized steel wire or tape and overall PVC sheathed cross sectional area 10 Sqmm 2 core multistrand Make "Plaza/ Finolex/ Havells/ Anchor/ Rallison/ Polycab	Mtr	50
22	PVC Copper Cable PVC 1.5 Sqmm S/C multistrand Make Plaza/ Finolex/ Havells/ Anchor/ Polycab/ Rallison.	Mtr	200
23	Batten holder Backelite (lamp holder should be insulated type with IS 1258-1979. Lamp holder shall suitable for fittings in pendent position). Make: Anchor/Plaza/ Havells/ABB.	Nos	10
24	PVC conduit pipe 20mm 10' long Make Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked	Nos	20
25	PVC tee 20mm Make Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked	Nos	10
26	PVC Round block Make Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked	Nos	18
27	PVC circular in box 2-4 way Make Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked	Nos	6
28	PVC shades with screw Make Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked	Nos	6
29	MCB 8 Amp single pole 240 volts Make Havells/LAT/ GEH/PLCC/Standard/500 Asian/eg and	Nos	1

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Ser No	Description of stores	A/U	Qty
30	MCB 20 Amp single pole 240 volts Make Havells/ L&T/ GE/HPL/CG/Standard/Indo Asian/Legrand.	No	1
31	Isolator 40 Amps S/P 240 Volts Make Havells/ L&T/ GE/HPL/CG/Standard/Indo Asian/Legrand.	No	1
32	MCB DB SPN four way double door 240 Volts Make Havells/ L&T/ GE/HPL/CG/Standard/Indo Asian/Legrand.	No	1
33	Ceiling Rose PVC Make "Anchor/Plaza /Havells/ABB/Shalabh."	Nos	18
34	PVC switch board 6"x8" Make Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked.	Nos	2
35	Switch Piano type 5 Amp Make- Anchor/Plaza /Havells/ABB/Shalabh.	Nos	18
36	Switch socket combination 3 pin 5 and 15 Amps multipurpose Make- Anchor/Plaza /Havells/ABB/Shalabh.	Nos	1
37	Switch socket combination 5 Amp 5 pin Make- Anchor/Plaza /Havells/ABB/Shalabh.	Nos	10
38	PVC elbow 20mm Make Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked.	Nos	8
39	Tape insulation 10 Mtr Make Steel Grip/ Anchor.	Roll	1
40	PVC switch board 7"x4" Make- Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked.	Nos	3
41	Exhaust fan 300mm sweep with louver shutter Make "Usha/Khaitan/ Havells/ Anchor/Polar/CG	Nos	2
42	PVC Copper Cable PVC 1 Sqmm S/C with solid conductor for earth wire in green colour make Plaza/ Finolex/ Havells/ Anchor/Polycab/Rallison.	RM	100
43	PVC Copper Cable PVC 1.5 Sqmm S/C with solid conductor for earth wire in green colour make Plaza/ Finolex/ Havells/ Anchor/Polycab/Rallison.	RM	30
44	PVC Copper Cable PVC 2.5 Sqmm S/C with multistrand conductor for power point make Plaza/ Finolex/ Havells/ Anchor/Polycab/Rallison.	RM	60
45	PVC switch board 6"x4" Make- Berlia/Harsh/Kinjal/Alwyn/Finolex ISI marked.	Nos	10
46	LC Set comprising of the following:- (a) GI plate of size 600x600x6mm thick with two Nos hole - 01 No (b) Air Terminal single pointed aluminum rod 12mm dia and 300 mm long fitted on GI Pipe. (c) GI plate of size 6"x6"x5mm thick for base plate-01 No. (d) GI pipe of 40mm dia light grade 03 Mtr long make (TATA/JINDAL/Surya/Parkash) (e) GI pipe 20mm dia light grade for watering - RM 2 Make : (TATA/JINDAL/Surya/Parkash) (f) Insulators with screws- 10 Nos 05 (g) Aluminum cable armoured 35 sqmm multi stranded single core make Plaza/Havells/Rallison/CCI -RM 5 (h) Testing points terminal box made out of gun metal or phosphors of size 75x75x25mm with screw. (i) Aluminum strip 25mmx8mm with hole at both ends RM 8 (k) Nut Bolst 2"x1/2" -08 Nos (l) Foundation Nuts & bolt 16mmx400mm -04 Nos (m) Charcoal -50 Kg (n) Common Salt -50 Kg (o) Earthing pit cover -01 No (p) GI funnel with wire mesh - 01 No (q) Aluminum lugs 35 sqmm for connection of cable with nut & bolt of suitable size - 02 Nos (r) Prown of 01 No Hollow block pit of size 45x45x45 CM incl plaster in CM 1:4 incl finished smooth.	Sat	1

CERTIFY TO BE TRUE COPY

R. K. STEEL

Proprietor


 Controlling Officer
 M. S. Steel & Sons

Cont

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Ser No	Description of stores	A/U	Q
47.	Elect Earthing Set with following items as given below:- (a) GI Earthing plate 600 x 600 x 6mm thk with two Nos holes - 01 Nos (b) GI pipe 15mm dia light grade for the protectin of GI wire Make TATA/ JINDAL/Prakash/Swastik-8 Mtr (c) GI pipe 20mm dia light grade for watering Make TATA/ JINDAL/Prakash/Swastik - 2 Mtr (d) GI wire 4mm dia - 2 Kgs (e) GI Funnel with wire mesh - 01 No (f) Common salt - 50Kg (g) Charcoal - 50Kg (h) GI Earthing pit cover complete - 01 No (i) GI Nut Bolt with washer of size 10mm dia 25 mm long - 02 Nos (k) Prown of 01 No Hollow block pit of size 45x45x45 CM incl plaster in CM 1:4 incl finished smooth	Set	

कर्मल/Col
कर्मल अफसर
Commanding Officer
101 इन्जीनियर रेजिमेन्ट
101 Engineer Regiment

CERTIFY TO BE TRUE COPY
R. K. STEEL
Raj Kumar Sharma
Proprietor

25. It is observed that the Part A comprises of the pre-fabricated structure , wherein the Value has been indicated inclusive of VAT. The Appendix B pertain to various items the Shelter. From the nature of items pertaining to Part B, it is seen that they are like Nuts and Bolts, White cement, Paints, Steel lockers, Septic Tank covers, , Exhaust fans, Vitrified Tiles along with Tiles Cutting Machine, Interlocking Tiles, Non Ceramic Tiles, Table , Chair, Copper wire (for wiring), lamp shed enamel conical, Bulb CFL, PVC Cable 1.5, Pendant Holder, PVC Conduit pipe , PVC Tee, Round Block, Urinal POT, Lightening Conductor, Sintex Tank, Soap Places, Stainless Steel Shrink etc., which are generally available

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with any vendor of these items and can be purchased by Army from them. They are not any special items without which the pre-fabricated building cannot come into existence, nor are they any special domain items of the appellant. We also observe from the copies of the Invoices that the appellant is supplying the Part B items from time to time, without any direct link with Part A. These are the items that could be procured by the Army independently from any party. It looks like that Army has placed the orders for such items on the appellant on account of convenience rather than these items being essential part of the pre-fabricated building. In such cases, it would be useful to go through the following case laws :

**2016 (333) E.L.T. 468 (Tri. - Del.)
 BREW FORCE MACHINES PVT. LTD.
 Vs COMMISSIONER OF C. EX., DELHI-II**

“8. The gist of allegation in the show cause notice is that appellant manufactured the complete brewery plant, using the bought out items, dismantled the same after testing and then transported to the buyers premises from where it was again installed and erected by the appellant. That the bought out items are therefore, essential part of the cleared finished goods and includible in the transaction value. The appellants contend that they are manufacturing only parts of brewery plant, i.e., storage tanks/machinery. The tanks are manufactured as per buyers specifications. The bought out items are used for erection/installation of the tank in the buyers premises and to connect the tank/machinery to other parts of brewery plant. The bought out items are also as per specifications of each tank. The tank and bought out items along with other machinery goes to form the brewery plant. The photograph of the plant with tanks was placed before us. On the look of these photographs, we have to say that the brewery plant is a massive structure and if once structured and fixed to the ground, it cannot be dismantled and transported without damaging it. Therefore, the case of the department that appellants manufactured complete plant and the bought out items are part of the complete plant manufactured by the appellant is untenable. In view of the above, the plea of the appellant that bought out items are not part of the excisable goods is acceptable.

**2005 (192) E.L.T. 620 (Tri. - Chennai)
 NEYCER INDIA LTD.
 Vs COMMISSIONER OF CENTRAL EXCISE, TRICHY**

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4. We have gone through the rival contention. The point at issue is whether the boughtout items are accessories or parts of the cistern. In our view, relying on the decision of the Bombay High Court in the case of *Koron Business Systems Ltd.*, the boughtout items required to make the cistern functional, should be considered as accessories only. These accessories are of different types and made of different materials. At the buyers option, these are supplied by the parts should be included in the assessable value of the cistern. The appellants relied on the decision of the Hon'ble Supreme Court in its judgment in the case of *Union of India v. Koron Business Systems Ltd.* - [1997 \(93\) E.L.T. 663](#) which upheld the judgment of the Bombay High Court. In that case the Bombay High Court held that plates and black shields are required for working of the photocopier but that by no stretch of imagination lead to the conclusion that plates and black shields are part and parcel of the machine. It was held that the value of plates and black shields cannot be included in the value of the photocopiers. Ld. Advocate argued that no doubt that the above-mentioned fittings are required to make the cistern functional but on account of that they cannot be called as parts of these cistern. The Tribunal in the case of *EID Parry India Ltd. v. CCE* - [2000 \(124\) E.L.T. 815](#) has held that the value of the fittings which were removed from godown after testing under a separate invoice is not includable in the assessable value of the cistern. The Tribunal in the case of *Super Electronics v. CCE* - [2001 \(127\) E.L.T. 302](#) held that even though speaker in audio-decks is essential, the same cannot be integral part of the main item that is audio-decks appellants. What the appellants manufactured is only the cistern which is made of ceramics. In these circumstances relying on the various case laws cited by the appellants, we hold that the value of the boughtout items is not includable in the assessable value of the cistern."

27. The appellant has submitted the Certificate dated 02.12.2016 issued by the Chartered Engineer, specifying the facilities available at the factory premises of the appellant, which is extracted below:

ANNEXURE - J

TOTAL - 285 pages

Ph. 0353-251

Mobile 98323-6

107/1, Patel

(Opp. to Netaji)

P.O. Pradhari

Siliguri - 73

Dipak Kr. Chakrabarti

M.I.E. (I), C.E., F.I.V.

Consultant Chartered Engineer & Approved Valuer

Date: 02-12-2016

To Whom It May Concerned

I have visited the factory of M/S R.K.Steel, Plot No. 20B, 2nd mile, Industrial Estate, Sevoke Road, Siliguri, W.B 734001 on Dated 15-11-2016 and checked with the schedule of the Balance sheet showing list of machineries with Machines installed in the above factory. I find the following Machines are installed:-

Sl. No	Names of Machine	Number	Capable for Use
01	Chop Saw Machine	12 nos	For Cutting the different type of MS Section
02	Kirloskar & Crompton Motors	02 nos	For Give the power to machine
03	Motor 3 Phase (12.5 HP)	01 nos	For Give the power to machine
04	Welding Machine 35 Amp	02 nos	For joining the different type of MS Section
05	Angle Grinder	05 nos	For Finishing the different type of MS Section
06	Drill Machine	06 nos	To Make Holes in the different type of MS Section
07	Polisher Machine	01 nos	To Paint the raw material
08	Pipe Bender	01 nos	To Bend the pipe in Curved shape
09	Electric Installation		To give the power supply to machinery
10	Sheet Bending Machine	01 nos	To Bend the Sheet

I have checked all the Supply orders with Appendix A & B received from different parties for supply of Pre-fabricated shelter vis-a-vis the estimation of each work order. The structural parts are manufactured according to the specifications given by the parties. The said parts along with purchased item are supplied to the parties. The parties install prefabricated shelters after using the structural parts with supplied items at site as per instruction enclosed in "user hand book by M/s R.K.Steel".

After examination of all the bills along with Supply orders and estimation papers, I have prepared Part-A for Fabrication portion and Part-B for Trading portion, which are enclosed separately and authenticated with my signature and seal for the year 2010 -11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16(up to Sept-15).

En closer:- Bill wise Part A and Part B

R. K. STEEL

Raj Kumar Ghosh

Proprietor

02-12-2016

Er. D. K. Chakrabarti

M.I.E. (I), C.E. (I), F.I.V.

Charter Engineer & Approved Valuer

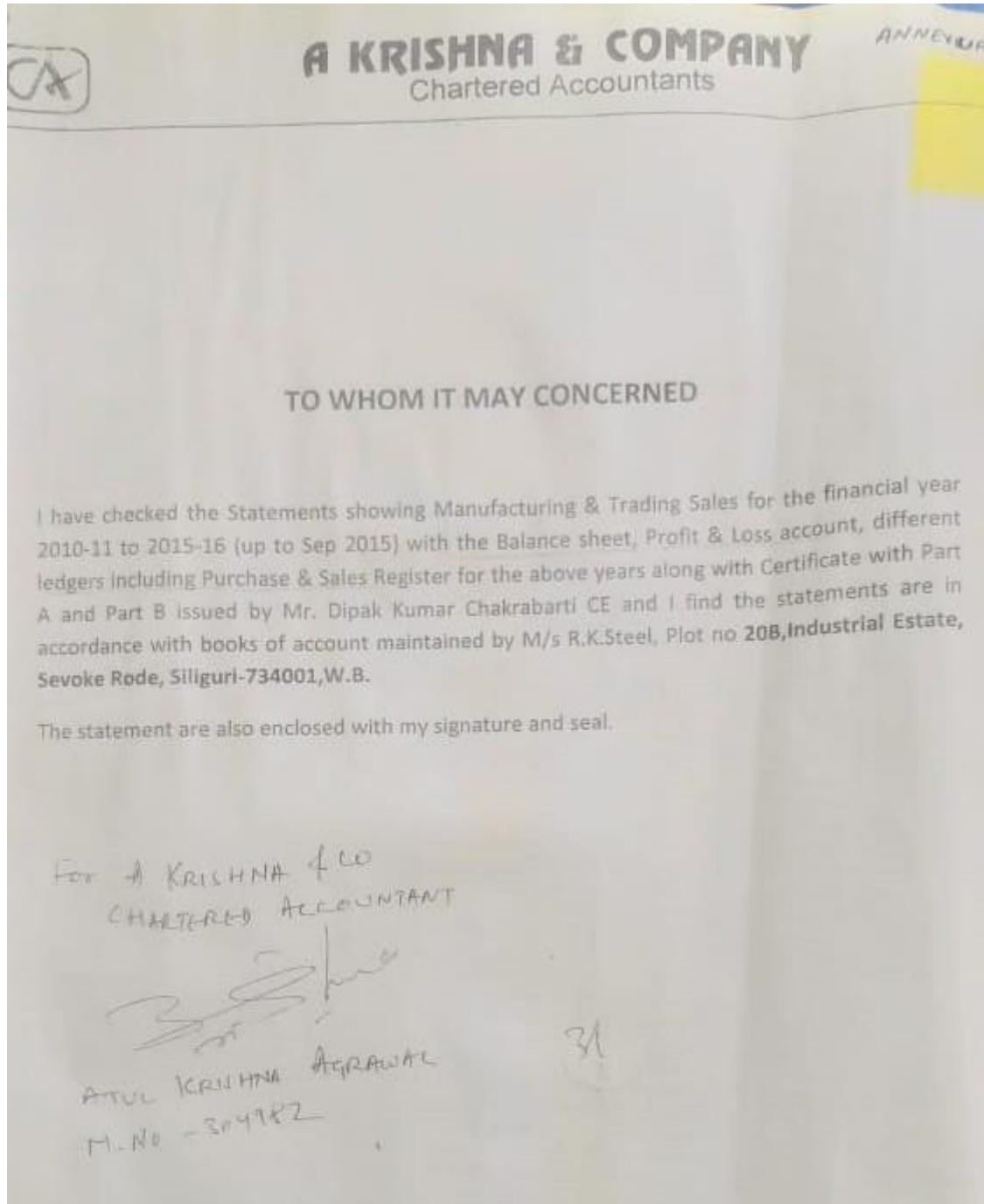
Pradhari Nagar, 97, and 98

C.E. (I) No. 11202, C.E. (I) No.

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28. It is observed that the appellant has limited machineries to carry out the basic work on the iron and steel items, because of which pre-fabricated structures come into existence. They do not have facility to manufacture and supply other items specified under Part B of the contract issued by the Army. These have to be necessarily procured from third party vendors for supply to the Army.

29. The appellants have also submitted the Certificate dated 14.12.2016 issued by the Chartered Accountant, giving the details of the turnover of the manufactured goods, trading goods, job work and VAT /CST payment etc, which is reproduced below :



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Statement Showing Manufacturing and Trading Sale by M/s R.K. Steel, Plot No.29 B, Industrial Estate, Sevoke Road							
for the Financial Year 2010-11							
Sl. No.	Date	Sale of Manufacture Goods	Sale of Trading Goods	Job Work	Carriage outward	VAT	Total Bill Value
2010-11							
120	01-04-2010	82,368.00				50,296.00	92,654.00
121	01-04-2010	4,38,992.76	5,18,962.80		8,600.00	1,20,444.44	10,84,000.00
122	27-04-2010	1,14,000.00				14,250.00	1,28,250.00
123	22-05-2010	87,000.00				10,875.00	97,875.00
124	02-06-2010	13,892.00				1,670.00	15,562.00
125	13-07-2010	8,060.44				987.56	9,048.00
126							
127					1,400.00	32,333.33	29,100.00
128	04-08-2010	3,08,404.59	3,48,882.08		14,000.00	3,03,866.60	5,44,000.00
129	06-08-2010	11,35,875.90	12,73,458.10		2,800.00	60,444.44	9,40,000.00
130	06-08-2010	2,26,442.84	2,54,312.72		5,600.00	1,04,444.44	
131	06-08-2010	3,42,733.06	4,87,220.50				
132							
133							
134						1,475.00	13,275.00
135	10-08-2010	13,800.00			1,400.00	32,333.33	29,100.00
136	10-08-2010	1,11,062.84	1,46,202.84		8,400.00	1,50,000.00	19,50,000.00
137	11-08-2010	5,06,819.82	6,84,780.58		21,000.00	4,61,111.11	21,50,000.00
138	12-08-2010	15,46,472.39	21,21,416.50			4,230.77	1,10,000.00
139	12-08-2010		1,05,709.28				13,60,000.00
140	16-08-2010	13,01,742.31			5,950.00	52,307.69	1,28,000.00
141	16-08-2010	1,22,788.92			288.00	4,923.08	8,07,000.00
142	18-08-2010		7,75,961.54			31,038.46	3,50,000.00
143	18-08-2010				1,575.00	15,845.15	5,75,000.00
144	18-08-2010	3,44,578.65			1,150.00	75,000.00	6,75,000.00
145	20-08-2010	2,88,454.26	3,08,395.74		8,400.00	1,84,444.44	26,60,000.00
146	20-08-2010	6,18,588.96	8,48,586.80		1,400.00	32,333.33	2,90,000.00
147	01-10-2010	1,17,467.35	1,38,910.43		1,050.00	25,000.00	2,24,000.00
148	01-10-2010	96,151.42	1,02,798.58		2,100.00	48,111.51	4,11,000.00
149	01-10-2010	1,54,647.24	2,12,141.65				
150	05-10-2010						
151	05-10-2010	1,21,693.67	1,66,641.22		2,750.00	36,595.11	3,29,125.00
152	01-10-2010	2,32,873.22	3,01,393.46		4,400.00	87,333.33	5,06,000.00
153	01-10-2010	1,59,751.59	2,62,156.52		4,400.00	53,288.89	4,79,600.00
154	01-10-2010		5,59,711.11			64,961.69	6,94,675.00
155	01-10-2010		6,92,307.69			27,562.31	7,20,000.00
156	30-10-2010	7,73,236.20	10,60,708.40		10,800.00	2,30,555.55	20,75,000.00
157	26-10-2010	1,17,467.35	1,38,910.43		1,400.00	42,333.33	2,10,000.00
158	28-10-2010		12,55,269.13			50,130.77	1,03,400.00
159	28-10-2010		4,22,441.54			16,998.46	4,39,380.00
160	29-11-2010	3,62,140.00	4,99,298.46		3,250.00	1,18,887.54	9,82,511.00
161	29-11-2010		56,860.58			2,274.42	59,135.00
162	29-11-2010		3,34,750.00			13,280.00	3,48,140.00
163	29-11-2010		44,613.38			1,784.62	46,400.00
164	29-11-2010		78,480.77			3,139.23	81,620.00
165	30-11-2010		2,41,165.38			3,646.52	2,50,812.00
166	30-11-2010		1,28,267.01			17,057.53	1,45,324.54
167	30-11-2010		98,500.00			2,140.00	1,00,640.00
168	30-11-2010	1,15,194.38	1,38,910.43		1,400.00	34,497.96	1,50,000.00
169	30-11-2010		3,230.77			29.23	3,260.00
170	30-11-2010	1,68,620.67	2,02,918.10		2,100.00	49,381.23	4,15,000.00
171	30-11-2010		2,11,881.93			6,478.08	2,18,360.00
172	30-11-2010		4,32,711.54			18,088.46	4,50,800.00
173	30-11-2010		5,54,115.38			22,164.62	5,76,280.00
174	01-12-2010	5,614.10				757.90	6,372.00
175	20-12-2010	98,034.30				13,234.55	1,11,268.85
176							
177	18-01-2011		49,34,615.38				
178	18-01-2011		1,07,884.62			1,68,384.62	63,93,600.00
179	23-01-2011	5,08,697.63	6,72,330.43			4,315.38	13,50,000.00
180	22-01-2011		3,11,515.38		8,400.00	1,60,572.69	2,20,000.00
						8,461.54	

Excise Appeal No. 75888 of 2017

Statement Showing Manufacturing and Trading Sale by M/s R.K.Steel, Plot No 20 B, Industrial Estate, Sevoka Road, Siliguri for the Financial Year 2010-11

Sr No	Date	Sale of Manufacture Goods	Sale of Trading Goods	Job Work	Carriage outward	VAT	Total Bill Value	Job Work
181	20-01-2011		5,34,573.00			21,875.00	5,56,448.00	
182	23-02-2011	3,13,805.56	2,92,407.66		2,600.00	68,986.78	5,85,005.00	
183	23-01-2011		7,81,943.33			21,577.64	8,03,520.97	
184	22-01-2011	6,88,147.40	5,57,040.18		21,200.00	2,23,612.33	14,80,000.00	
185	02-02-2011		73,250.00			2,930.00	76,180.00	
186	05-02-2011		68,778.74			8,420.28	77,200.00	
187	05-02-2011			2,48,000.00				2,48,000.00
188	05-02-2011	1,19,716.87	8,89,172.30		3,300.00	58,811.23	10,10,000.00	
189	05-02-2011	11,84,965.30	16,23,144.80		16,800.00	3,94,888.87	21,20,000.00	
190	09-02-2011	6,63,166.18	8,61,273.48		8,400.00	2,06,980.35	17,40,000.00	
191	05-02-2011		15,37,564.95			2,02,038.00	17,40,000.00	
192	01-03-2011	1,01,158.68	2,43,841.32			8,100.00	1,52,100.00	
		1,35,92,829.95	2,85,37,322.74	2,48,000.00	1,70,400.00	42,32,912.32	4,65,33,476.88	2,48,000.00

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ATUL KRISHNA AGRAWAL
CHARTERED ACCOUNTANT
M No. 30498

Annexure -

Statement Showing Manufacturing Sale, Trading Sale, Carriage Out ward, VAT Paid & Job Work
Seperately with Total Amount of Sale by M/s R.K.Steel, Industrial Estate , Plote No 20 B ,Sevoke 2
mile, Siliguri for the Fincial Year from 2010-11 to 2015-16 (Upto Sep'15)

Year	Manufacturing	Trading	Carriage Outward	Vat Paid	Total	Job Works	Total Sale
2010-11	1,35,92,829.95	2,85,37,322.78	1,70,413.00	42,12,412.32	4,65,33,478.01	2,45,000.00	4,23,00,565.69
2011-12	1,46,85,183.59	3,11,23,303.32	2,04,749.00	40,03,705.65	5,00,16,941.56	7,200.00	4,60,13,235.91
2012-13	99,33,954.01	1,22,78,192.55	1,45,073.00	19,82,959.73	2,43,40,179.30	18,000.00	2,23,57,219.57
2013-14	1,01,41,632.76	2,44,08,991.15	1,33,411.00	31,92,782.80	3,78,76,817.70	11,87,520.00	3,46,84,034.90
2014-15	64,19,707.76	4,40,37,115.98	1,09,000.00	40,13,377.62	5,45,79,351.36	5,500.00	5,95,66,023.74
2015-16 (Uptill Sep'15)	2,88,001.35	1,01,68,890.40	1,21,300.00	5,68,586.25	1,13,48,778.00	14,66,270.00	1,07,80,191.75
Total	5,50,61,309.42	15,07,54,016.14	8,85,946.00	1,79,31,276.36	22,46,95,847.93		20,67,01,271.56

CA's Certificate P/553

ATUL KRISHNA AGRAVAL

CERTIFY TO BE TRUE COPY

7560

30. From the CA’s Certificate, it is seen that the manufacturing activity details and the turnover of the Trading, along with the VAT paid details are shown. From the Table II extract at para 12 above, it is seen that the Dept. has also considered the turnover of Trading Activity to the

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extent of Rs.65,15,067/- only and deducted the same from the total turnover of the appellant.

31. The factual matrix discussed above along with the case laws discussed above, makes us to come to a conclusion that basically the appellant is only manufacturing and clearing the pre-fabricated items of iron and steel falling under CET 73.08. The Dept. has not brought in any evidence to the effect the Part B items are specific to the design and domain of the appellant, so as to conclude that the pre-fabricated building comes to existence at the end of the Army, who are assembling the same. Therefore, we are not able to subscribe to the view of the Revenue's view that the appellant has manufactured and cleared 'pre-fabricated building / shed' in CKD / SKD condition.

32. We also had a look at the case law cited by the appellants:

1999 (113) E.L.T. 336 (Tribunal)
AMIYA CORPORATION
Vs COMMISSIONER OF CENTRAL EXCISE, CALCUTTA I

2. We have heard both sides. We have gone through the impugned orders. From the conjoint reading of tariff heading, of Chapter Note 4 and HSN Explanatory Notes, we observe that pre-fabricated buildings whether in assembled form or in unassembled form and to be assembled at site, alone is covered by the said tariff heading. HSN Explanatory Notes makes it very clear that parts of prefabricated building presented separately are excluded from the scope of the tariff heading.

3. Revenue's case in the impugned orders is that since the appellants have supplied prefabricated structures, therefore, the prefabricated buildings are classified under Heading 94.06. We observe that every structure is not necessarily a building. The building must have a wall as is apparent from the HSN Explanatory Notes. We observe that there is no allegation whatsoever in all the impugned orders nor in the customers orders relied upon by the Revenue that the appellants herein have supplied panels for walls and roof. Therefore, in our considered opinion, the

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structure supplied by the appellants in unassembled form as mentioned above cannot be treated as prefabricated buildings under Tariff Heading 94.06.

4. The next plea of the Id. Consultant is that purlin, trusses, V bracket etc. as mentioned above are being fabricated by the appellants from duty paid iron and steel products by cutting them to size, drilling holes in them and by joining them. This activity does not amount to manufacture. This position is now well settled by one of the latest judgments of the Tribunal in the case of *Elecon Engineering* reported in [1999 \(107\) E.L.T. 337](#) (Tribunal) = 1999 (31) RLT 5. He therefore, submits that the appellants could not be treated as manufacturer and hence the products are not dutiable at all.

5. After having heard the Id. Constt. for the appellants, we agree with him that these items are not dutiable and the items cannot be the result of the manufacture. It is not a dutiable activity. We rely on the Tribunal's judgment in the case of *Elecon Engineering* (supra). In view of our aforesaid discussion, the question of clubbing the clearance of two factories does not arise. Consequently, we set aside the impugned orders and allow the appeals with consequential relief to the appellants.

33. We find that the above decision addresses all the three issues raised in the present case. First of all, when the pre-fabricated structures are cleared but are not in complete form and are assembled at the end of the buyer, it is held that the goods in question cannot be classified under CET 94.06 but are classifiable under CET 73.08. Secondly, even the work undertaken on the iron and steel items would not amount to manufacture of pre-fabricated items falling under CET 73.08. Hence, the appellant cannot be even held to be manufacturing the goods falling under CET 73.08. However, this is not disputed by the appellant in the present case. The appellant claims that they are manufacturing goods falling under CET 73.08, but are claiming the SSI exemption. The *Amiya Engg* case law also holds that the clubbing together the turnover of different factories cannot be the ground to deny the exemption benefit. Therefore, we hold that the cited decision is squarely applicable to the facts of the present case.

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34. In view of the above discussions, we hold that the appellants have cleared goods falling under CET 73.08 and reject the Revenue's view that the goods would fall under CET 94.06.

35. Coming to the issue of seizure and confiscation of the goods, we have already held that the goods in question do not fall under CET 94.06 as is being viewed by the Revenue. We have also held that the turnover of other units cannot be added to that of the appellant. Therefore, the very seizure on the ground that the goods are likely to be cleared without payment of Excise Duty gets demolished. Secondly, we also find force in the appellant's argument that the goods in question which happen to be inputs and semi-finished goods cannot be seized since they have not even reached the finished goods. Finally, when the goods are within the factory premises and have not been seized in transit without any proper documents, in plethora of cases it has been held, there cannot be any presumption about their subsequent clearance without payment of Excise Duty and that seizure and confiscation is legally not sustain.

36. In view of our above observations, we set aside the confiscation ordered and the Redemption Fine imposed on the appellant.

37. The appellant has also argued on the ground that part of the Show Cause Notice is hit by time bar based on the factual details and has also cited some case laws. We find that the appellants are in the business since 1992. They are registered with the VAT authorities and are also filing Income Tax Returns, P & L Accounts and Balance Sheets with various statutory authorities. All the transactions have been properly recorded in their books of accounts, from wherein the data has been gathered to quantify the demand amount. The transactions with the so called '*related units*' are also under proper VAT paid invoices through banking channels. Hence, the appellant could be

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carrying the bonafide belief that the SSI benefit being claimed by them is correct. Further, the case laws of Elecon and Amiya support the view of the appellant that work carried out on iron and steel items on its own will not make the goods excisable under CET 73.08 and supply of the Part B items by sourcing from the third party will not make the item fall under CET 94.06. These factual details show that the appellant has not made any attempt to suppress any details with an intent to evade Excise Duty. On the other hand, the Dept., has not brought in any proper evidence towards the alleged suppression on the part of the appellant. Even while alleging the dummy status of the other firms, no evidence has been brought in about the mutuality of interest and flow back of the benefits to the appellant.

38. We take a look of the judgements of the Supreme Court in respect to invocation of the extended period:

**1989 (40) E.L.T. 276 (S.C.)
CCE Vs CHEMPHAR DRUGS & LINIMENTS**

The Apex Court held : ".....In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not

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include the value of the exempted goods which they manufactured at the relevant time.

1989 (43) E.L.T. 195 (S.C.)

PADMINI PRODUCTS Vs COLLECTOR OF C. EX.

The Apex Court held : ".....As mentioned hereinbefore, mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not, would not attract Section 11-A of the Act. In the facts and circumstances of this case, there were materials, as indicated to suggest that there was scope for confusion and the appellants believing that the goods came within the purview of the concept of handicrafts and as such were exempt. If there was scope for such a belief or opinion, then failure either to take out a licence or to pay duty on that belief, when there was no contrary evidence that the producer or the manufacturer knew that these were excisable or required to be licensed, would not attract the penal provisions of Section 11-A of the Act."

39. Considering the factual details and applying the ratio of judgements of the Apex Court cited above, we hold that the confirmed demand for the extended period is not legal. Therefore, we set aside the confirmed demand for the extended period on the ground of time-bar also.

40. To summarize :

- (a) The Revenue is seeking to add the turnover of other units, without considering the factual evidence brought in to the effect that they are independent entities and without bringing in any evidence towards mutuality of interest and flow back of proceeds. These factors, combined with the fact that the other entities whose turnovers have been added to the turnover of the appellant, have not been made co-noticee and have not been given any opportunity to make their submissions, vitiate the proceedings. On these grounds we

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hold that the clubbing of the turnover and consequent denial of SSI benefit is illegal. On the same ground, we hold that the quantified demand based on the addition of the turnover of other entities with that of the appellant is illegal. Therefore, on these grounds the impugned order is set aside and the appeal stands allowed on merits.

- (b) The factual details prove that the appellants have cleared pre-fabricated structures falling under CET 73.08 and hence we reject the view of the Revenue holding the view that the goods fall under CET 94.06. Even on this ground, the impugned order is set aside and the appeal stands allowed.
- (c) We hold that the seizure and confiscation is legally not sustainable. Accordingly, we set aside the confiscation and Redemption Fine ordered in the OIO.
- (d) We hold that the Revenue has not made out any case of suppression against the appellant. Hence, the confirmed demand in respect of the extended period is set aside on account of time bar.

41. The impugned order is set aside on the above terms and the appeal stands allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on...12.06.2025.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.
