CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85256 of 2016

[Arising out of Order-in-Appeal No. SK/21 & 22/Th-II/2015 dated 14.10.2015 passed by the Commissioner (Appeals), Mumbai-I]

Dasharath Pranjivan Chauhan **.... Appellant**
Director of M/s. Aquathane Chemicals Pvt. Ltd.,
Village Valiv, Vasai Vajreshwary Road,
Vasai (E), Dist.-Thane.

Versus

Commissioner of Central Excise, Thane-II **.... Respondent**
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar, Mumbai - 400 028.

With

Excise Appeal No. 85259 of 2016

[Arising out of Order-in-Appeal No. SK/21 & 22/Th-II/2015 dated 14.10.2015 passed by the Commissioner (Appeals), Mumbai-I]

Aquathane Chemicals Pvt. Ltd. **.... Appellant**
Village Valiv, Vasai Vajreshwary Road,
Vasai (E), Dist.-Thane.

Versus

Commissioner of Central Excise, Thane-II **.... Respondent**
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar, Mumbai - 400 028.

Appearance:

Ms. Padmavati Patil, Advocate for the Appellant
Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85710-85711/2025

Date of Hearing: 04.04.2025
Date of Decision: 04.04.2025

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of Pigment Dispersions and Pigment Chips, classifiable under Chapter 32 of the First Schedule to the

Central Excise Tariff Act, 1985. The appellants undertake such manufacturing activities in their factory situated at Village Valiv, Vasai Vajreshwary Road, Vasai (E), Dist-Thane. The appellant being a Small Scale Industrial Unit (SSI Unit), during the disputed period had availed the benefit of Notification No. 9/2000-C.E., dated 01.03.2000 in respect of the clearances of the final products made by them. However, the department had denied the benefit of the exemption notification, on the ground that M/s. Parle Products Pvt. Ltd., is the holding company of the appellants since, they hold almost 80% of the share capital in the appellants company. Thus, it was contended by Revenue that if the value of clearances/turnover of Parle Products is added to the clearance value of the final product manufactured by the appellants, then such value would be much more, than the prescribed threshold limit provided under the said notification. Therefore, the department had interpreted that the appellants should not be entitled for the concessional rate of duty provided under the said Notification dated 01.03.2000. The matter arising out of the show cause notice dated 04.01.2006 issued in this regard, was adjudicated vide order dated 31.07.2006, wherein the learned Adjudicating Authority had confirmed Central Excise Duty along with interest and also imposed penalties on the appellants. On appeal against the said adjudication order dated 31.07.2006, the learned Commissioner of Central Excise (Appeals), Mumbai-I vide the impugned order dated 14.10.2015 has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 14.10.2015, the appellants have preferred these appeals before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that the holding company, i.e., M/s Parle Products Pvt. Ltd., is a separately incorporated company and also are recognized as a distinct manufacturer of excisable goods, for which separate registration certificate was issued in their favour by the jurisdictional Central Excise authorities. She submitted that the appellants are engaged in the manufacture of the excisable goods, and their application for registration was considered favourably by the department by way of issuing the certificate in their favour, without mentioning the name of the parent company therein.

Thus, she submitted that the clearance value of both the units cannot be clubbed together, in order to deny the SSI benefit provided under the Notification dated 01.03.2000. She further submitted that the grounds urged in the show cause notice with regard to the interconnected undertaking is relevant only for the purpose of determination of the 'transaction value' under Section 4 of the Central Excise Act, 1944 and the said concept cannot be borrowed or applied for the purpose of consideration of issue of availment of the SSI exemption provided under the Notification dated 01.03.2000. To support such stand, learned Advocate has relied upon the order of Co-ordinate Bench of this Tribunal, in the case of *Commr. Of C. Ex. & Cus., Bangalore-II Vs. Aschem Agrotech (P) Ltd.* – 2015 (315) E.L.T. 618 (Tri.- Bang.).

3. On the other hand, learned Authorized Representative appearing for Revenue reiterated the findings recorded in the impugned order and further submitted that since Parle Products Pvt. Ltd., is a holding company of the appellants and holds almost 80% of the share capital, their value of clearance should also be considered for the purpose of calculation of the assessable value under the Notification dated 01.03.2000. He has relied upon the judgment of Hon'ble Supreme Court in the case of *Parle Bisleri Pvt. Ltd., Vs. Commr. Of Cus. & C.Ex., Ahmedabad* – 2011 (263) E.L.T. 15 (S.C.) and the judgment of Hon'ble Allahabad High Court in the case of *Premium Suiting (P) Ltd. Vs. Commissioner of Central Excise* – 2016 (331) E.L.T. 589 (All.), to state that denial of the benefit of Notification dated 01.03.2000 and confirmation of the adjudged demands on the appellants by the department is in conformity with the statutory provisions.

4. Heard both sides and examined the case records.

5. It is an admitted fact on record that the appellants are engaged in the manufacture of excisable goods and also claimed the benefit of Notification dated 01.03.2000 in respect of the Central Excise duty payable on the excisable goods removed from their factory. However, the Revenue has denied the benefit of such notification solely on the ground that the appellants are 'interconnected undertaking' of M/s Parle Products Pvt. Ltd., and as such, the clearance value of such

holding company should be clubbed with the clearance value of the appellants for the purpose of denying the benefit of Notification dated 01.03.2000, as a SSI Unit. On reading of the said Notification dated 01.03.2000, we find that the concept of 'interconnected undertaking', 'holding and subsidiary' etc., had not been dealt with by the Central Government therein. It is not the case of Revenue that the appellants had not maintained separate accounting records, reflecting their financial particulars. Since, the appellants are recognized as an independent manufacturer of excisable goods, which are distinctively different from the final products of M/s. Parle Products and upon satisfaction, the jurisdictional Central Excise authorities have issued the Central Excise Registration certificate in their behalf, in our considered view, the clearance value of holding company M/s. Parle Products Pvt. Ltd., cannot be clubbed with the clearance value of the appellants for the purpose of denying the benefit of SSI exemption provided under the Notification dated 01.03.2000. We find that the issue arising out of the present issue is no more *res integra,* in view of the order passed by the Tribunal in the case of *Aschem Agrotech (P) Ltd.(supra)*. The relevant paragraphs recorded in the said order are extracted herein below:

> *"2. We find that the issue as to whether a subsidiary company and holding company should treated as different for the purpose of SSI benefit or not was considered by this Tribunal in the case of CCE, Cochin v. Modern Food Industries Ltd. reported in 2006 (198) E.L.T. 95 (Tri.-Bang.) = 2008 (9) S.T.R. 329 (Tri. - Bang.). At this juncture learned AR would submit that this case can be distinguished by the fact that there was evidence of flow of funds from the holding company to the subsidiary company. In our opinion this fact alone cannot make a difference. For all purposes the holding company would be having more than 50% of the shares of the subsidiary company and in this case admittedly 100% of the shares are held by the holding company. When 100% of the shares are held, Interest is paid on the loan or not does not really make a difference for the transaction between the two. Because in any case the holding company would have to bear the entire amount or profit or loss, whatever be the result of the activity of the subsidiary.*
>
> *3. We also take note of the fact that the original adjudicating authority while dropping the show cause notice has made the following observations:*
>
> *(a) The two companies are located at different places and are Independent legal entities,*
>
> *(b) M/s. HLPL did not sell any of the goods manufactured by them to the assessee company.*

(c) The products manufactured by M/s. HLPL and the assessee were different.

(d) There were no commercial transactions between the two companies.

(e) The profit or loss was assessed separately and there was no interference between two companies in administrative control, exercised by either company.

(f) The ratio of Supreme Court judgment in the case of CCE, Bangalore v. M/s. Gammon Far Chems limited reported in 2003 (152) E.L.T. 28 (S.C.) is not applicable to the case of M/s. HLPL, as the department had not established that they (M/s. HLPL) had produces goods on behalf of the holding company i.e., the assessee.

(g) The clarification given by the Board In Circular No. 6/92, dated 29-5-1992 supports the case of M/s. HLPL.

(h) As per the rulings of the Hon'ble Tribunal in the case of M/s. Precision Gears Privat Limited v. CCE, Bombay/Indore reported in 1998 (100) E.L.T. 535 (Tri.-Del.) the mere fact of holding shares would not make other company an unit of the other when both of them existed as independent entities.

4. These observations show that the decision of the original adjudicating authority is logic. and correct and has been rightly upheld. In view of the above discussion, the appeal is rejected".

6. The judgement of Hon'ble Supreme Court, in the cases of Parle Bisleri Pvt. Ltd.,(supra) and Premium Suiting (P) Ltd. (supra), relied upon by the learned AR for Revenue are distinguishable from the facts of the present case inasmuch as the issue considered in those decided cases is in context with affixation of the brand name of another manufacturer(s) and the judicial forum have held that in the case, where brand name of another manufacturer is affixed with the product manufactured by the assessee governed under SSI, then the claim of the benefit provided to the SSI unit, shall not be available. Contrary is the situation in the present case, inasmuch as the appellants are recognized as an independent manufacturer of excisable goods and for that purpose, were also issued with the registration certificate by the jurisdictional Central Excise authorities. Further, the authorities under the Company Law statute have also recognized the appellants as a separate entity and accordingly, issued the incorporation certificate in their behalf. The appellants have also maintained adequate records/books of accounts, to establish themselves that they are independent manufacturer of excisable goods. Therefore, we are of the considered view that the

value of clearances of the holding company, under such circumstances, cannot be clubbed with the value of the goods cleared by the appellants, for denying the benefit provided under the Notification dated 01.03.2000.

7. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Order dictated and pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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