

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CEA No.2 of 2015
Date of decision: 14.10.2015**

Commissioner of Central Excise

.....Appellant

M/s Saron Mechanical Works

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Kamal Sehgal, Advocate for the appellant.

Mr. Sudeep Singh, Advocate for the respondent.

Ramendra Jain,J.

1. This order shall dispose of CEA Nos.2 and 3 of 2015 as learned counsel for the parties are agreed that the issues involved in both the appeals are common. However, the facts are being extracted from CEA No.2 of 2015.

2. CEA No.2 of 2015 has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short, "the 1944 Act") against the order dated 10.8.2007, Annexure A.3 passed by the Commissioner (Appeals) and order dated 10.2.2014, Annexure A.4 passed by the Customs, Central Excise and Services Tax Appellate Tribunal, New Delhi (in short, "the Tribunal") in Appeal No.2916/07, claiming following

substantial questions of law:-

- “i) Whether the Hon'ble Tribunal has erred in not appreciating the statements of the proprietor of the M/s Jagatjit Agro Industries, Accountant of the M/s Jagatjit Agro Industries and Store Incharge admitting clandestine removal of the fact that the same have not been retracted during the entire proceedings?
- ii) Whether in the facts and circumstances of the case and clear cut admission by the proprietor of the M/s Jagatjit Agro Industries and other persons, the Hon'ble Tribunal has erred in not clubbing the clearances of both the units and ordering recovery of central excise duty as proposed in the show cause notice?”

3. A few facts relevant for the decision of the controversy involved as narrated in CEA No.2 of 2015 may be noticed. On 10.6.2003, the Central Excise Preventive Officers, Ludhiana searched the factory premises of M/s Jagatjit Agro Industries on the strength of search warrants issued by the competent authority. It was found engaged in manufacturing of boring machines falling under sub head No.8430.00 of the Schedule to the Central Excise Tariff Act, 1985 (in short, “the 1985 Act”) and exempted goods of agricultural equipment like reaper etc. It was not registered with the Central Excise department and was availing the benefit of duty exemption applicable to SSI unit in view of notification dated 1.3.2003. During search, it was found that the respondent M/s Saron Mechanical works and M/s Jagatjit Agro Industries jointly had crossed the duty exemption limit of ₹ 1 crore and were clearing the dutiable goods without payment of appropriate Central Excise duty without obtaining Central Excise registration as required under section 6 of 1944 Act read with Rule 9 of the Central Excise Rules, 2002 (in short, “the 2002 Rules”).

Consequently, show cause notice dated 5.1.2006 was served upon both the respondents proposing Central excise duty demand by clubbing their clearances. The adjudicating authority vide order dated 7.8.2006 confirmed the demand of duty amounting to ₹ 17,37,954/- by clubbing the sale of both the respondents alongwith interest and penalty of the equal amount of ₹ 17,37,954/- on M/s Jagatjit Agro Industries. Similar amount besides penalty was imposed upon M/s Saron Mechanical Works. Aggrieved by the order, both the respondents preferred their separate appeals before the Commissioner (Appeals) who vide order dated 10.8.2007, Annexure A.3 allowed the appeals and set aside the order dated 7.8.2006. Not satisfied with the order, the department filed appeal before the Tribunal. Vide order dated 10.2.2014, Annexure A.4, the Tribunal dismissed the appeal holding that units of both the respondents were separate to each other as M/s Saron Mechanical works was working since the year 1994 whereas M/s Jagatjit Agro Industries had started working in the year 2001. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant-revenue submitted that the Tribunal failed to appreciate that the proprietors of both the units had not retracted from their statements as well as of their Accountant and Store Incharge made before the search team. Both the respondents had stored the raw material without maintaining any separate record regarding their respective manufacturing of boring machines by using raw material and machinery with the help of both the units as and when required. Even both the respondents were having common electricity connection, telephone,

computer, office accountant. They were dependent on each other as they were issuing the sale bills as per their requirement. They had fragmented their sales in order to avail the benefit of SSI exemption fraudulently. The adjudicating authority had rightly clubbed the clearances of both the respondents removed by them in a clandestine manner. The Commissioner (Appeals) and the Tribunal ought to have relied upon the statements of the proprietors which were not under inducement or threat. Reliance was placed on judgments in *Shiv Shakti Steel Tubes vs. Commissioner of Central Excise, Ludhiana*, (2008) 221 ELT 166, *Shiv Shakti Steel Tubes vs. Commissioner of Central Excise, Ludhiana*, (2008) 227 ELT 122 (SC), *Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Pvt. Limited*, (2011) 270 ELT 643 (SC) and *Commissioner of Central Excise, Madras vs. Systems and Components Pvt. Limited*, (2004) 165 ELT 136 (SC).

6. On the other hand, learned counsel for the respondent-assessee while supporting the impugned orders submitted that there was no justification in clubbing the clearances of both the respondents because the same could be done only when the other unit is dummy. In the present case, both the proprietors were separate manufacturers though they might be sharing certain facilities. Even otherwise, if the value shown in the show cause notice was taken as value of clearance, then also, the same did not exceed SSI benefit of ₹ 1 crore by either of the two respondents even if taken on 50:50 basis.

7. While reversing the findings recorded by the assessing authority, the Commissioner (Appeals) categorically recorded that without

declaring M/s Saron Mechanical works as a dummy unit, how their clearances could be clubbed with the clearances of M/s Jagatjit Agro Industries. The fact of clandestine removal of goods had not been proved. Mere quoting the statements of the proprietors and some of their employees was not enough. The value of clandestinely removed goods had not been adjudged. After considering the entire evidence on record, it was noticed by the Commissioner (Appeals) as under:-

“The duty from appellant No.1 has been demanded by clubbing the clearances of proprietary unit M/s Saron Mechanical Works (appellant No.2) owned by the father of Shri Jagatjit Singh, Prop. of the appellants No.1 firm. As per facts on record, during the visit on 10.6.2003 by the Central Excise officers to the appellants' units, some slip pads and loose slips relating to the appellants No.1 and 2 were recovered. The statement of one Shri Roji Thomas, was recorded on 10.6.2003 wherein he had stated that he was looking after as Store in charge in the appellant No.2 since 1.7.2001 and was also looking after the work relating to quality control of machines sold by the firm; that he was also Store in charge and quality controller of appellant No.2 because both the above firms had common raw material storage. The allegation of clandestine manufacture has been based on under mentioned grounds (1) manufacture and sale of 83 boring machines having value of ₹66,00,000/- and these slip pads were issued mostly by one Shri Pala Ram and in some cases issuing person not known as detailed in Annexure 1. The date of issue was not mentioned on these slip pads but these have been considered for the year 2002-03. (2) Manufacture and sale of 13 Boring Machines valued ₹ 16,25,000/- issued by Shri Roji Thomas details as per Annexure II. (3) the details of slip pads for the period 2003-04 issued by Shri Roji Thomas valued ₹ 75,00,000/-. (4) Loose slips issued during 2003-04 by Labh

and Jassi. Anwar and Jassi contractors as per Annexure VII valued ₹ 86,75,000/- apart from above in Annexures IV, V and VI details of machines have been mentioned which reflected the sale of machines entered in the register for the period June 2003, 2003-04 and 2002/03 respectively involving the value of ₹ 24,50,000/- and ₹ 3,80,000/- respectively.

In the defense, the appellants have specifically emphasized that the investigation officers had recorded the statement of Shri Roji Thomas who has been shown as writer of loose slips and he had also admitted that these machines noted in slip had been manufactured and the version was subsequently confirmed by the respective proprietor of appellants No.1 and appellant No.2. They have specifically argued that there is absolutely no such statement of writer of slips as mentioned in Annexure 1 and appellant No.2. They have specifically argued that there is absolutely no such statement of writer of slips as mentioned in Annexure 1 or by the person shown as contractor shown in Annexure 7. Their contention is that if the value of those machines listed in annexures 1 and 7 respectively is excluded even then value of the sale attributed to both the units does not exceed the duty free limit of ₹ 1 crore in any financial year. That the perusal of Annexure 1 to the show cause notice would reveal that its heading is detailed of slip pads wherein date of issue was not mentioned. Therefore, the head itself suggests that the dates were not mentioned on the slips and had it not been made clear and elaborated by the adjudicating authority that how the department has included the alleged sale shown as sales for the year 2002-03. Further under heading – slips issued by – in this annexure either it has mentioned “not known” or the name Pala Ram has been mentioned. In the entire proceedings I find that there is nothing on record about any statement of the said Pala Ram who had been claimed to be the person having issued these slips by the department and why he was not confronted with these slips and why his statement was

not on record. In these circumstances the plea of the appellants finds force that either author of the loose slips was unknown or it was Shri Pala Ram whose role has not been proved by any evidence. In these circumstances rather no evidence either to the effect that who has prepared/authored these loose slips or by whom these machines were made, had been brought on record, it is difficult to hold that the said machines were manufactured and removed by the appellants in a clandestine manner. For placing reliance on such records i.e. loose slips it is necessary that at least author of these slips should have been examined and their statements should have been recorded supporting the charge that they have prepared these slips. In respect of Annexure VII which carries the details of loose slips there is no mention of persons who or by whom these slips were issued rather whom these slips were issued rather this annexure bears a column "Name of contractor" wherein certain name e.g. Labh and Jassi, Anwar and Jassi etc. have been mentioned. No statements of such persons have been brought on record in support of charge of the revenue that the machines mentioned as per this annexure were manufactured by them as discussed above. Further, these annexures are silent about to whom these machines or any of the machine was sold. In respect of annexure 1 and annexure VIII it is also observed in absence of statement of these persons who have allegedly manufactured these machines, no reliance placed on these loose slips which is relevant to issue i.e. no evidence in respect of procurement of inputs with reference to alleged clandestine manufacture/clearances of goods mentioned in these two annexure I and VIII has been brought on record. Neither there is any evidence on record to the effect that as to whom the said machines after manufacture were cleared. Therefore, thus keeping in view these facts, it is difficult to sustain charge of clandestine removal of goods mentioned in annexures I and VII. Further, the appellants also contested the issue clubbing of both

the appellants as the department has clubbed the clearances of appellants M/s Saron Mechanical Works. Bhikhi Road Cheema Mandi i.e. appellant No.2 for calculating the value of the goods in a particular year. Their contention is that without declaring the unit i.e. M/s Saron Mechanical Works, Bhikhi Road Cheema Mandi as declaring unit, how the clearances of both the units are clubbed. It has been argued by the appellants that the unit is not dummy rather the unit is owned by father of the owner of the unit of appellant No.1 and No.2 have been clubbed. I find even Shri Roji Thomas, whose statements relied upon for including the clearances mentioned on slips as per annexures II and III has also stated that he was working for appellant No.2 as Store in charge since July 2001 and that he was also Quality Controller of unit No.1. This means it is not much in dispute that there existed two units one each of appellant No.1 and appellant No.2 and both were the manufacturers.

The adjudicating authority in the impugned order has not discussed annexures I to VII on the basis of which the demand has been made. The fact of clandestine removal has not been proved in the impugned order. Mere quoting the statement of the proprietors and some of their employees who have stated that they were in need of financial assistance was not enough. The value of clandestinely removed goods has not been adjudged. This case was of crossing the sale of ₹ 1 crore notice had contested the authority of the slip pads and loose slips which were the basis of arriving at the alleged clandestine removal and duty demand in the show cause notice. But the adjudicating authority has not discussed the annexures and their authenticity for confirming the demands.”

8. The Tribunal upheld the findings recorded by the Commissioner (Appeals). The relevant findings recorded by the Tribunal read thus:-

“5. After hearing both the sides, I find that admittedly M/s Saron Mechanical Works was established in 1994. the same cannot be held a dummy unit of M/s Jagatjit Agro Industries, which was established in 2001. A unit which was already working for almost six to seven years cannot be held to be a dummy of another unit which is yet to come into existence.

Otherwise also, I find that it is not the revenue's case that both the units are not having complete machinery so as to manufacture the goods in question. Merely because a common electricity connection was used by both the units by itself will not make it a dummy of one another. Similarly, a common accountant or a common store room for raw materials cannot be held to be a reason for clubbing the clearances of both the units when there is no dispute about both the units being complete in themselves and manufacturing goods independently of each other.”

9. The findings recorded by the Commissioner(Appeals) and the Tribunal are pure findings of fact which have not been shown to be illegal or perverse in any manner by the learned counsel for the appellant. The view adopted by the Commissioner (Appeals) and the Tribunal is a plausible view based on appreciation of material on record and, therefore, does not warrant any interference by this Court. The judgments relied upon by the learned counsel for the appellant being based on individual fact situation involved therein do not come to the rescue of the appellant. Consequently, no substantial question of law arises. The appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

(Ramendra Jain)
Judge

October 14, 2015
kd/gs