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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **CEAC No. 22/2017 & CM APPL 28676/2017**

THE COMMISSIONER, GST (EAST), CR BUILDING, I.P. ESTATE, NEW DELHI ..... Appellant
Through: Mr. Harpreet Singh, Senior Standing Counsel with Ms. Namrata Bharti, Advocate

versus

M/S UNITECH CONTAINERS PVT. LTD. ..... Respondent
Through: None

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% 11.08.2017

1. This appeal by the Commissioner, GST Delhi (East), New Delhi ('Department') under Section 35G of the Central Excise Act, 1944 ('CE Act') is directed against a common final order dated 17th February, 2017 passed by the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') in the appeals filed before it by the Respondent, Unitech Containers Pvt. Ltd., against the order in original dated 27th February, 2009 passed by the Commissioner Central Excise, Delhi-2 ('CCE').

2. It is stated that in July, 2005 certain investigations were carried out in the various premises of the Respondent which is engaged in the manufacturing

of cardboard cartons but is not registered with the department since the turnover was much below the threshold limit under CE Act.

3. According to the Department, the Respondent was manufacturing the excisable goods by using various dummy units that were managed and controlled by the Directors of the Respondent. It was found that while the Show Cause Notice ('SCN') was issued to the Respondent and three of its directors, no SCN was issued to the dummy units. The demand raised in the SCN was confirmed by the impugned order of the CCE dated 27th February, 2009.

4. One of the points urged by the Respondent before the CESTAT was that the turnover of the four dummy units i.e. Unichem Engineering (P) Ltd., Anant Packaging, Akriti Packaging and Universal Offsets, was sought to be added to the turnover of the Respondent to arrive at the eligible amount for the 'Small Scale Industry' exemption. It was claimed that each of the four units have independent existence as private limited companies or partnerships. Two of them were stated to be existing even prior to the incorporation of the Respondent. It is argued that, without issuing the SCN to the other units, the clearance of those units could not be combined with that of the Respondent.

5. The CESTAT while allowing the above plea of the Respondent, placed reliance, *inter alia*, on the decision of the Calcutta High Court in ***CCE, Kolkata - II v. Diamond Scaffolding Co. 2011 (274) ELT 10 (Cal)*** and that of the Gujarat High Court in ***Premier Heavy Engineering Corporation v. CCE 2016 (337) ELT 332 (Guj)***. The CESTAT quashed the demand

confirmed by the impugned adjudication order.

6. Mr. Harpreet Singh, learned Senior Standing Counsel for the Department, relied on the decision of this Court in ***Diwan Sahib Fashions Pvt. Ltd. v. CCE, Delhi-I 2013 (288) ELT 529 (Tri-Del)***.

7. Having perused the said decision, the Court finds that it is distinguishable in its application to the facts of the present case. In that case, both the units whose turnover was sought to be clubbed were in fact issued the SCN. On the other hand, in the present case, the turnover of the four units whose turnover was sought to be clubbed with that of the Respondent were not issued the SCN.

8. The Court finds that there is no legal infirmity in the impugned order of the CESTAT. No substantial question of law arises for consideration. The appeal is dismissed. The pending application also stands dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 11, 2017
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