

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 648 of 2011

(Arising out of Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011
(issued on 13.04.2011) passed by the Commissioner of Central Excise and Service
Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

M/s. Mica Mold : Appellant
P.O.: Sunder Nagar, Jamshedpur – 832 107 (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi, Jamshedpur – 831 001 (Jharkhand)
WITH

Excise Appeal No. 649 of 2011

(Arising out of Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011
(issued on 13.04.2011) passed by the Commissioner of Central Excise and Service
Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

M/s. Mica Mold : Appellant
P.O.: Sunder Nagar, Jamshedpur – 832 107 (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi, Jamshedpur – 831 001 (Jharkhand)
WITH

Excise Appeal No. 650 of 2011

(Arising out of Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011
(issued on 13.04.2011) passed by the Commissioner of Central Excise and Service
Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

Shri Arun Agarwal, : Appellant
C/o. M/s. Mica Mold
P.O.: Sunder Nagar, Jamshedpur – 832 107 (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi, Jamshedpur – 831 001 (Jharkhand)
WITH

Excise Appeal No. 651 of 2011

(Arising out of Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011
(issued on 13.04.2011) passed by the Commissioner of Central Excise and Service
Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

M/s. Mica Mold (P) Limited : Appellant
P.O.: Sunder Nagar, Jamshedpur – 832 107 (Jharkhand)

VERSUS

Appeal No(s).: E/648-654/2011-DB

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi, Jamshedpur – 831 001 (Jharkhand)
WITH

Excise Appeal No. 652 of 2011

(Arising out of Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011 (issued on 13.04.2011) passed by the Commissioner of Central Excise and Service Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

M/s. Mica Mold : Appellant
P.O.: Sunder Nagar, Jamshedpur – 832 107 (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi, Jamshedpur – 831 001 (Jharkhand)
WITH

Excise Appeal No. 653 of 2011

(Arising out of Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011 (issued on 13.04.2011) passed by the Commissioner of Central Excise and Service Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

M/s. Mica Mold : Appellant
P.O.: Sunder Nagar, Jamshedpur – 832 107 (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi, Jamshedpur – 831 001 (Jharkhand)
AND

Excise Appeal No. 654 of 2011

(Arising out of Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011 (issued on 13.04.2011) passed by the Commissioner of Central Excise and Service Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

Shri Harsh Agarwal, : Appellant
C/o. M/s. Mica Mold (P) Limited
P.O.: Sunder Nagar, Jamshedpur – 832 107 (Jharkhand)

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi, Jamshedpur – 831 001 (Jharkhand)

APPEARANCE:

Shri Nitin Kumar Pasari, Advocate,
Shri Anand Kumar Pasari, Advocate,
Shri Akshat Agarwal, Advocate
Shri Subham Gurung, Advocate,
Shri Parikshit Karmakar, Advocate
For the Appellant(s)

Shri S. Dey, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOS. 77005-77011/2025

DATE OF HEARING: 05.06.2025

DATE OF DECISION: 23.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeals have been filed against the Order-in-Original No. 06-09/Commissioner/2011 dated 31.03.2011 (issued on 13.04.2011) passed by the Commissioner of Central Excise and Service Tax, 143, New Baradwari, Sakchi, Jamshedpur. As all the appeals emanate from the same order, all these appeals are taken up together for decision by a common order.

2. The facts of the case are that that M/s Mica Mold (hereinafter referred as MM / the "appellant") is a proprietorship concern whose sole proprietor is Arun Agarwal. The appellant has their place of business and factory in Sunder Nagar, Jamshedpur in the State of Jharkhand . The appellant, at the relevant time, was duly registered in terms of the provisions of the Central Excise Act, 1944 for the purpose of carrying on manufacturing activity in the said factory. The appellant was engaged in the manufacture of electrical items, for D.C traction motors and

generating sets which are used in Railway locomotives, namely, brushholders, insulators, etc., all falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985. Major part of the goods manufactured by the appellant are supplied to the Indian Railways. The remaining parts are supplied to the Crompton Greaves Ltd, Bhopal, Bharat Heavy Electricals Ltd, Bhopal and other such companies. The main customer for these components manufactured by the appellant are, however, the Indian Railways. The raw materials used for the final products manufactured by the appellant are mica powder, red lead power, boric acid, lithium, carbonate, non-ferrous casting steel, teflon sleeve, rocker ring, lead wire and spring. The appellant availed the benefit of exemption granted to small scale industrial units in terms of Notification No.8/2003 dated March 1, 2003, as amended.

2.1. On 2nd and 3rd November, 2007, a search was conducted by the officers of the Directorate General of Central Excise Intelligence, Jamshedpur (in short, "DGCEI") in the said factory and residential premises of the proprietor, Arun Agarwal as well as another employee of the appellant. various documents and records were seized. In addition, the factory premises of Mica Mold Pvt. Ltd, Jamshedpur (hereinafter referred as "MMPL"), a private limited company incorporated under the Companies Act, 1956, was also searched and some documents were recovered. One of the four directors of MMPL was Mr. Arun Agarwal, one of the appellants herein. The residential premises of the other directors of MMPI, were also searched. In the course of the search, inter alia, Indian currency worth Rs.4.31 crores was also seized from the office premises of the appellant and

residential premises of one of its employees. During the course of search and seizure, statements were recorded of the appellant's proprietor and some of its employees. After the search and seizure operations were carried out, statement was recorded only of Shri Arun Agarwal as proprietor of M/s. Mica Mold and also the Director of M/s. Mica Mold Pvt. Ltd. However, no statement was recorded from the other Directors.

2.2. On scrutiny of the seized documents, it appeared that MM have wrongly availed SSI exemption under Notification No. 08/2003-CE dated 01.03.2003 and evaded duty on the aggregate value of clearances of MM & MMPL exceeding the specified limit as stipulated in the said notification. The investigation also revealed that MM had removed goods clandestinely from its own premises as well as from the factory of MMPL with intent to evade central excise duty. Besides above, MM was also engaged in reconditioning of electrical items in its factory and used its own manufactured finished products for replacing defective items during the said reconditioning but allegedly central excise duty was not paid on said finished items used during reconditioning. Thus, investigating officers were of the view that MM during the period from 2003-04 up to 07.11.2007, by suppression of material facts in collusion with MMPL evaded central excise duty amounting to Rs. 1,39,27,791/-, Ed. Cess of Rs.2,50,570/- and S.H.E. Cess of Rs. 56,984.

2.3. Thereafter, on April 26, 2008, the appellant was issued with a Show Cause Notice, along with its proprietor, MMPL and one of its Directors, Shri Harsh Agarwal, by the Additional Director General of Central Excise Intelligence, Kolkata Zonal Unit, Kolkata

whereby, the appellant was called upon to show cause to the Commissioner of Central Excise and Service Tax, Jamshedpur (hereinafter referred to as "the Commissioner) as to why:-

- a) the value of clearances of the appellant and MMPL should not be clubbed together for the purpose of small scale industries exemption under the said Notification.
- b) central excise duty amounting to Rs.1,42,35,345/- (including education cess, secondary and higher education cess) in respect of the aforesaid goods manufactured and cleared by the appellant and MMPL during the period April 1, 2003 to November 2, 2007 (hereinafter referred to as the "said period") should not be demanded and recovered from the appellant under Section 11A of the Act, by invoking the extended period of limitation of five years under the Proviso to Section 11A (1) of the Act, along with interest thereon in terms of Section 11AB of the Act.
- c) penalty should not be imposed upon the appellant under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as the "said Rules").
- d) an amount of Indian currency of Rs.1,22,56,966/- seized under the Seizure Memo dated April 25, 2008 should not be confiscated under Section 121 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act"), which has been made applicable to Central Excise.

2.4. The Show Cause Notice also proposed imposition of separate penalties upon MMPL, Arun Agarwal, proprietor of the appellant and Harsh Agarwal, a director of MMPL, all under Rule 26 of the said Rules, for alleged omissions and commissions set out in the show cause notice.

2.5. Further, on an identical issue for subsequent periods, show cause notices have been issued as per details hereunder:-

- (i) C.No. V(72)(15)110/APP/ADJ/JSR/08/11642-11645 dated 19.11.2008 for B.E.D. Rs. 39,21,898/-, E.Cess Rs. 78,437/- and S.H.E. Cess Rs. 39,213/-, total Rs. 40,39,548/ for the period covering 03.11.07 to 30.09.08;
- (ii) C.No. V(72)(15)69/APP/ADJ/JSR/2009/13314-13317 dated 08.10.2009 for B.E.D. Rs. 11,87,264/-, E.Cess Rs. 23,748/ and S.H.E. Cess Rs. 11,876/, total Rs. 12,22,888/ for the period 01.10.08 to 30.06.09; and
- (iii) C.No.V(72)(15)17/APP/ADJ/JSR/2010/7340-7343 dated 07.07.2010 for B.E.D. Rs. 6,64,523/-, E.Cess Rs. 13,289/- and S.H.E. Cess Rs. 6,639/-, total Rs. 6,84,451/ for the period 01.07.09 to 31.12.09.

2.6. As the issue involved were same, all the Notices were adjudicated vide a common Order-in-Original dated 31.03.2011 (issued on 13.04.2011), wherein the Id. adjudicating authority has passed the following order:

“(1) I determine Central Excise duty show cause notice wise as under:-

(a) Rs. 1,42,35,345/ in respect of show cause notice DGCEI F. No. 154/KZU/KOL/JSR/Gr.F/08/2976 dated 26.04.2008;

(b) Rs. 40,39,548/ in respect of show cause notice C.No. V(72)(15)110/APP/ADJ/JSR/08/11642-11645 dated 19.11.2008;

(c) Rs. 12,22,888/ in respect of show cause notice C.No. V(72)(15)69/APP/ADJ/JSR/2009/13314-13317 dated 08.10.2009; and

(d)Rs. 6,84,451/ in respect of show cause notice C.No. V(72)(15)17/APP/ADJ/JSR/2010/7340-7343 dated 07.07.2010.

recoverable from M/s Mica Mold, Jamshedpur and M/s Mica Mold, Jamshedpur is directed to pay the same along with interest as per provision under Section 11AB of the Central Excise Act, 1944.

(2) Show cause notices wise penalty under Section 11AC of Central Excise Act, 1944 is imposed on M/s Mica Mold, Jamshedpur as under:-

(a) Rs. 1,42,35,345/- in respect of show cause notice DGCEI F. No. 154/KZU/KOL/JSR/Gr.F/08/2976 dated 26.04.2008;

(b) Rs. 40,39,548/ in respect of show cause notice

C.No.V(72)(15)110/APP/ADJ/JSR/08/11642-11645 dated 19.11.2008;

(c) Rs. 12,22,888/ in respect of show cause notice

C.No. V(72)(15)69/APP/ADJ/JSR/2009/13314-13317 dated 08.10.2009; and

(d) Rs. 6,84,451/ in respect of show cause notice dated 07.07.2010.
C.No. V(72)(15)17/APP/ADJ/JSR/2010/7340-7343 dated 07.07.2010.

However, the amount of penalty as above shall reduce to 25% of the amounts mentioned above, if M/s Mica Mold, Jamshedpur pay the amount of duty as determined above and ordered for payment alongwith interest and penalty within thirty days of the receipt of this order.

(3) Indian currency amounting to Rs. 1,22,56,966/ is confiscated absolutely under Section 121 of the Customs Act, 1962 applicable to Central Excise by virtue of provision contained in Section 12 of the Central Excise Act, 1944.

(4) In respect of all four show cause notices, I impose penalty on M/s Mica Mold Pvt. Ltd., Jamshedpur, Sri Arun Agrawal, Proprietor of M/s Mica Mold, Jamshedpur & Director of M/s Mica Mold Pvt. Ltd., Jamshedpur as well as on Sri Harsh Agrawal under rule 26 of the Central Excise Rules, 2002 as under:-

(a) M/s Mica Mold Pvt. Ltd., Jamshedpur
Rs. 50,00,000/- (Rupees fifty lakh) only.

(b) Sri Arun Agrawal, Proprietor of M/s
Mica Mold and Director of M/s Mica Mold
Pvt. Ltd. Rs. 50,00,000/- (Rupees fifty
lakh)only.

(c) Sri Harsh Agrawal, Director of M/s
Mica Mold Pvt. Ltd., Jamshedpur Rs.
20,00,000/- (Rupees twenty lakh) only.

3. Aggrieved against the demands of duty confirmed along with interest and imposition of penalty, the appellants had approached the Tribunal, Kolkata in First Appeal. The appeals were heard by this Tribunal and this Tribunal allowed the appeal partly in favour of the appellants and partly remanding the matter to the adjudicating authority, i.e.,

a- Clubbing of both the units was set aside.

b- On the issue of replacement of parts, the issue was remanded.

c- Inspection charges was set aside.

d- Confiscation was set aside.

e- Penalties were set aside.

4. Aggrieved against the said order of the Tribunal, the Revenue preferred an appeal before the Hon'ble Jharkhand High Court vide Tax Appeal No. 45/2018. In the appeal so preferred, following issues had been raised:

- (1) Whether value of clearances of MM and MMPL are to be clubbed for determining Central Excise duty payable as MMPL?
- (2) Whether duty of excise on goods valued at Rs. 40,56,508 are recoverable?
- (3) Whether inspection charges paid to M/s. RITES by Indian Railways for inspection of the goods being supplied by MM and MMPL should be part of the assessable value of such goods cleared and be liable to central excise duty?
- (4) Whether duty on goods manufactured and used for repairs and reconditioning are leviable or not?
- (5) Whether amount of Rs. 1.23 Crore seized from the premises of MM/MMPL pertained to the sale proceeds of unaccounted goods cleared clandestinely and hence are liable to confiscation?
- (6) Whether they are liable for penalty as proposed in the notices?

4.1. The Hon'ble High Court did not interfere with the other issues raised by the Revenue, save and except Issue no. (1) and remitted the matter back to this Tribunal *inter alia* holding as under:

"41. The issue of clubbing together for the purpose of getting exemption requires consideration on the basis of the transaction of the business which cannot be assessed only on the basis of the fact that one unit is a Proprietary concern and another is Private Limited Company.

....

46. This Court has considered the order impugned and after taking into consideration the specific consideration given by the original authority based upon the documents which is lacking in the order passed by the Tribunal so far as Issue No.1 is concerned.

47. Therefore, according to our considered view, the finding so recorded in paragraph 7 of the impugned order needs to be interfered with.

48. Accordingly, the same is hereby quashed and set aside.

49. In the result, the matter with respect to Issue No.1 is remitted before the Tribunal for passing order afresh on consideration/appreciation of the relevant documents which are available on record."

4.2. Thus, the Hon'ble High Court has remanded only the following issue to this Tribunal for deciding it afresh on the basis of documents available on record;

"Whether value of clearances of MM and MMPL are to be clubbed for determining Central Excise duty payable as MMPL?"

5. Hence, the present proceedings.

6. The Ld. Counsel appearing on behalf of the appellants has submitted that the Department has charged MMPL to be a dummy and camouflage unit, without any evidence to substantiate the allegation. They submit that MM is a proprietorship firm and MMPL a private limited company; both MM & MMPL are separated by two kms. and everything is separate. It is also stated in this regard that the workers of both the units are separate.

6.1. Regarding the issue pertaining to vendor numbers of both the units mentioned in the purchase order issued by the Railways, the Ld. Counsel for the appellants submitted that the Work Orders/Purchase Orders were issued in the name of M/s. Mica Mold (MM) along with independent vendor code. It is their submission that purchase orders were issued to M/S. Mica Mold Pvt. Ltd. (MMPL), with a new vendor code and thus, there is no truth in the allegation of the Revenue in this regard.

6.2. Regarding the allegation that the work orders initially received in the name of M/s. Mica Mold (MM) has been subsequently changed to M/s. Mica Mold Pvt.Ltd.(MMPL), the Ld. Counsel for the appellants submitted that Purchase Orders ought to have been issued in the name of M/S. Mica Mold Pvt. Ltd. only, since M/S. Mica Mold Pvt. Ltd. had participated in the Tender Process. It is pointed out that however, in some cases where the Purchase Orders had been wrongly issued in the name of M/s. Mica Mold, the same have been rectified by Railways, as is evident from the corrected Purchase Order submitted by them, copy of which is placed in Page 685 of the appeal paper book.

6.3. Regarding the allegation that the Entries of MM/AA [where 'MA' denotes Mica Mold and 'AA' denotes Arun Agarwal] found in the Inward/Outward Register of MMPL, it is the submission of the appellants that the stock register of MMPL mentioned at various places: MMPL/AA. It is their submission in this regard that the entries MM or AA have been interchangeably used concerning the materials received from the proprietorship firm for job work and after completion of job and the same were returned

to the proprietorship concern under valid documents, which is not in dispute. The appellants also state that for the job work carried out by MMPL, the proprietorship firm i.e., MM used to make payment to the Company, which is duly reflected in the books of accounts of the Company.

6.4. In view of the above submissions, the Ld. Counsel for the appellants have contended that the evidences on record clearly indicates that both MM and MMPL have independent existence and their value of clearances cannot be clubbed together for the purpose of determining the value of clearances to extend the benefit of the Notification No. 8/03-CE dated 01.03.2003, as amended.

6.5. The appellants submit that the aforesaid issues are no longer res-integra as has been decided in -

A) Associated Engineering Projects Vrs. Commr. of C.EX. & ST, Meerut-I (2019 (370) E.L.T. 756 (Tri.- All.))]

B) Anurag Dyes & Chemicals Pvt. Ltd. Vrs. Commissioner of C.EX.& ST, Delhi-IV (Faridabad) [2018 (363) E.L.T. 216 (Tri.- Chan.)]

C) Plasto Containers (India) P. Ltd. Vrs. Commissioner of C.EX., Nagpur (2011 (268) E.L.T. 509 (Tri.-Mum.))]

6.6. Accordingly, the Ld. Counsel for the appellants contended that the value of clearances of both the units should not be clubbed.

7. On the other hand, the Ld. Authorized Representative of the Revenue submits that MMPL is a dummy unit of MM due to the following reasons:

- a) Shri Arun Agarwal is the proprietor of M/s. Mica Mold and is also a Director in M/s. Mica Mold Pvt.Ltd.
- b) The other Directors of M/s. Mica Mold Pvt. Ltd., are the sons of Shri Arun Agarwal.
- c) M/s. Mica Mold Pvt. Ltd. and M/s. Mica Mold are having their offices in a common premises.

7.1. The Ld. Authorized Representative of the Revenue accordingly contends that the evidences indicate that MMPL is a dummy unit of MM. Hence, it is his contention that the value of clearances of both the units are to be clubbed.

8. Heard both sides and perused the appeal records.

9. We observe that the Hon'ble Calcutta High Court has remanded the matter to this Tribunal for deciding the issue afresh on the basis of documents available on record. The issue to be decided in this proceedings is whether MM and MMPL have independent existences or not and their value of clearances are to be clubbed or not, for the purpose of extending the benefit of the Notification No. 8/03-CE, as amended.

9.1. From the documents available on record, we find that the manufacturing premises of both the units are situated on different locations and have independent staffs, independent working, independent electrical collection, independent Sales Tax Registration. These facts indicate that both the units MM and MMPL were existing independently.

9.2. The allegation of the Revenue is that the value of clearances of both the units are to be clubbed since Shri Arun Agarwal, proprietor of M/s. Mica Mold (MM) is also a Director in M/s.Mica Mold Pvt.Ltd. (MMPL), the other Directors of M/s. Mica Mold Pvt. Ltd., are the sons of Shri Arun Agarwal and also for the reason that M/s.Mica Mold Pvt. Ltd. and M/s. Mica Mold are having their offices in a common premises. In this regard, we find that merely because one person is a common Director in both the units, the same cannot be a ground for clubbing the value of clearances of both the units.

9.2.1. We find that the Department has not brought in evidence to establish that there is mutuality of interest or financial flowback between both the units. We also take note of the fact that both the units were having separate bank accounts. We find that both the units have independent manufacturing premises having separate staff. Both the units have been recognized by even a Government Agency viz. Railways. Merely because both the units are run by same family members and the books of accounts are maintained in one common office, it cannot be alleged that they have mutuality of interest in each other's businesses.

9.3. We observe that the aforesaid issues are no longer *res integra* as has been decided in the case of *Associated Engineering Projects Vrs. Commr. of C.EX. & ST, Meerut-I [(2019 (370) E.L.T. 756 (Tri.- All.))]*, wherein it has been held as under: -

"3. We note that the Learned Advocate for the appellants have argued that the conclusion drawn by the Original Authority is that all other units are dummy to M/s. Associated Engineering Projects. The Learned Counsel for the appellant has drawn our

attention through the decision of this Tribunal in the case of *Sree Nirmal Spinners v. CCE, Coimbatore* reported at [2014 \(300\) E.L.T. 469](#) (Tri. - Chennai) wherein this Tribunal has held that clubbing of clearances cannot be done merely on the ground of presence of common partners of the same family and also further held that financial flowback is required for clubbing among the units. He has further submitted that this Tribunal in the said case has held that since the units in the said case were having separate registration under Income Tax, Sales Tax, Directorate of Industries and also separate electricity connections etc. and were maintaining records separately and that there were no financial flowback and therefore, their clearances could not be clubbed. The Learned Counsel submitted that similarly in the present case except for the units being looked after by the members of same family and the same accountant attending the maintenance of accounts, the Original authority did not establish that all the units were having same Income Tax registration, same Sales Tax registration, same registration under Director of Industries and same electricity connections. Therefore, he argued that the finding of Original Authority is not sustainable. The Learned Counsel further submitted that the different units were located at difference places, their raw materials were different, their final products were different and their books of account like sales register, purchase register were maintained independent of each other and that their bank accounts were independent of each other and that there was no common funding, no common managerial control and no mutuality of interest in the business of each other.

4. We have noted that the Learned AR has supported the impugned order.

5. We find in the present case that the individual manufacturing appellants have independent identities since the Revenue could not establish that their books of accounts are common, that their bank accounts are common, that their registration with Income Tax, Sales Tax are common and that there is common funding and that there is mutuality of interest and that there is financial flowback and that the units which were held to be dummy did not have any manufacturing facility. In the absence of any such evidence, we hold that the manufacturer units

are independent units and therefore, their clearances could not be clubbed together. We, therefore, hold that denial of benefit of SSI Exemption to the manufacturer appellants is not sustainable and therefore, demands confirmed against them are not sustainable.

6. We, therefore, set aside the impugned order and allow all the appeals with consequential relief, as per law."

9.4. In the case of *Anurag Dyes & Chemicals Pvt. Ltd. Vrs. Commissioner of C.EX.& S.T., Delhi-IV (Faridabad) [2018 (363) E.L.T. 216 (Tri.- Chan.)]*, it has been held as under:

*"9. We find that in this case, all the three units were established way back in 1970s and all the units were registered with Central Excise department and having separate registrations. All the units have surrendered their Central Excise registration in the year 2002. As the facts of establishment of these units were in the knowledge of the department and have been granted registration under Central Excise Act, after due verification and it is fact on record machineries were not disputed while granting registration to them. It is also on record that all the units are located in Plot No. 40 but Plot No. 40 is having different sheds and the units were located in different sheds. Therefore, it cannot be said that all the units are located in a same building. Moreover, they are having different entry gates for them. It is fact that in all the units, Shri Atul Gulati is a common person who is managing affairs of all the three units but same cannot be taken a ground for clubbing the clearances of all units, in the light of decision in the case of *Renu Tandon v. UOI - 1993 (66) E.L.T. 375 (Raj.)* wherein the Hon'ble High Court has observed as under : -*

"36. The petitioner is a lady entrepreneur and has passed M.Com. She decided to start a unit for manufacture of copper wire and installed wire drawing machines in August, 1989 over a portion of the land taken on rent from M/s. Tandon Brothers; on a monthly rent of Rs. 715/-. The petitioner has filed a copy of

the rent deed duly executed with the approval of the RIICO who had given the land on lease to M/s. Tandon Brothers. The petitioner also obtained a provisional certificate of registration from the Directorate of Industries, Jaipur and thereafter applied to the Supdt. Central Excise, for grant of a licence to manufacture copper wire of thickness entered into the Schedule attached with the application, giving the address of the premises as 'A-14-A, 22 Godowns'. The officers of the excise Deptt. inspected the site and after a thorough enquiry, issued a licence under Rules 174 and 178 of the Central Excise Rules, 1944. It may be noted here that M/s. Tandon Brothers is also carrying on a similar business of drawing copper wires on a nearby plot "A-14, Industrial Estate, 22 Godown, Jaipur" which is also registered with the Excise Department and the Department was fully aware of this fact before issuing licence under the Central Excise Rules to the petitioner. The petitioner also applied for a separate electric connection from the Rajasthan State Electricity Board and since connection was not given, she had made arrangements from M/s. Tandon Brothers situated nearby and installed a sub-meter for calculation of the actual consumption to be paid to M/s. Tandon Brothers. The petitioner also opened a separate bank account in the name of the unit and obtained limits from the bank. She has been operating the bank account herself. After starting manufacture of copper wires she submitted return in Form RT-12 to the Supdt., Customs and Central Excise. The first return was submitted on 7-10-1989. It was only on 29th August, 1990 that a notice was issued to the petitioner to show cause as to why the classification list effective from 1-4-1990 should not be approved taking into consideration the value of clearances of both the units as clubbed together. The only ground to issue such a notice was that the two factories are located adjacent to each other and that the proprietor of M/s. Tandon Brothers happens to be the father-in-law of the petitioner and that the work of both these units is being looked after by Shri Avinash Tandon who is the husband

of the petitioner and son of Shri S.K. Tandon and that she has been consuming electric power from M/s. Tandon Brothers. These facts which have been mentioned in the show cause notice, in no way, can give rise to a presumption or even an inference that the two units should be treated as one unit. I have already quoted above the various authorities cited by the Learned Counsel for the petitioner, of various High Courts and the Tribunal wherein it has been held that the value of clearances of the two units cannot be clubbed together and the two units cannot be treated as one unit merely because of proximity of relationship or the situation of the two factories or because there are some common employees unless there is a clear and specific evidence that there is mutuality of business interest between the two units and that both have interest in the business of each other or they have common funding and financial flowback. In the present case, the most important aspect about having common funding and financial flowback is missing and therefore, to withdraw the assessment or club the clearances is wholly unjustified and illegal and without jurisdiction. Reference in this connection may be made to International Dyestuff Mfg. Co. v. Collector of Central Excise, Baroda [[1991 \(53\) E.L.T. 85](#) (Tribunal) = (1991) 33 ECR 31]. The petitioner has asserted on oath that she had opened a separate bank account, she is herself operating the same and obtained limits and that the impugned notice is conspicuously silent and there is no allegation worth the name that they have any common funding or financial flowback. Mere blood relationship or sharing of staff, some temporary common employment, similarity of product is also not sufficient to draw an inference that the two units should be clubbed together. Since I have already quoted extracts of decisions in detail, of various Tribunals and the Courts, in the earlier part of this order, I am not reproducing them here again. Unless there is some basis and material available with the Department, it has no right or jurisdiction to issue a show cause notice and it will be wastage of energy and time if

the petitioner is directed to appear before the Department to get this aspect decided as on the face of the notice itself read as a whole, the department has not been able to gather any material to come to that conclusion."

10. Further, we find that all the three units have been registered separately after completing investigation. In that circumstance, the clearances made by three units cannot be clubbed in the light of the decision in the case of *Plasto Containers (India) Pvt. Limited v. CCE, Nagpur* - [2011 \(268\) E.L.T. 509](#) (Tri.-Mumbai), wherein this Tribunal has observed as under : -

"34. In the case of *CCE v. Electro Mechanical Corporation (supra)* the Apex Court held that if there is no evidence to prove that there was mutuality of business interest or there was flowback of funds from one unit to another, it is not possible to hold that clearances of two units could be clubbed. The Hon'ble Rajasthan High Court in the case of *Renu Tandon v. Union of India* - [1993 \(66\) E.L.T. 375](#). (in the facts, two units were situated in the same premises, manufacturing similar products, having common management, having common office and labour, having common electric connection and one unit was owned by father-in-law and other by daughter-in-law and both the units were being looked after by husband.) held that value of clearances could be clubbed unless mutuality of interest in the business of each other is proved by the Revenue. In this case the Revenue has failed to prove through evidence that there is a mutuality of interest. Reliance in the case of *Modi Alkalies* by the DR is of no help to the facts of this case as in that case the facts are somehow different which are reproduced hereunder : -

M/s. Modi Alkalies & Chemicals Ltd. (in short 'MACL') is engaged in the manufacture of caustic soda of which Hydrogen gas is a by-product. The Central Excise Authorities noticed that in reality MACL was engaged in the manufacture of Hydrogen gas falling under sub-heading 2804.90 of the Schedule of the Central Excise Tariff Act, 1985 (in short Tariff Act'). But with a view to evade payment

of excise duty it floated three front companies, namely, respondent nos. 2 to 4 i.e. M/s. Mahabaleshwar Gas & Chemicals Pvt. Ltd. (for short 'MGCPL'), Shri Chamundi Gas and Chemicals Pvt. Ltd. (for short 'SCGCPL') and M/s. Nippon Gas and Chemicals Pvt. Ltd. (for short 'NGCPL'). All the three front companies were in vicinity of the factory of MACL. What in reality happened was that through pipelines Hydrogen gas was sent to the three front companies for compressing and bottling the gas. The sole object was to avail benefit of exemption given to small scale industries under the Central Excise Notification No. 1/93, dated 28-2-1993 and thereby evade payment of central excise duty. With a view to unravel the truth, Director General of Anti-Evasion (for short 'DGAE') searched the factory and office premises of MACL and the three front companies on 27-9-1996. It was found that all the three bottling units were located in one single shed and were separated from each other by small brick walls of about 4 ft. height. The Directors of the three front companies were employees of either MACL or other Modi Group of companies and they were frequently changed. They had common staff for maintenance of records, and operation of the units. The main plant and machinery i.e. cylinders had been supplied only by MACL and the total finance was provided by MACL as unsecured loans or had been arranged by finance companies whose whereabouts were not even known to the Directors of the three front companies. Marketing of the products was done by one Ritesh Beotra, a so-called Director of SCGCPL who was working as Deputy Manager (Marketing) in M/s. Modi Gas & Chemicals Sales Depot at Delhi. He was marketing various gases manufactured by a Modi group concern and was answerable as an employee of MACL. It was, therefore, concluded that MACL had control over Hydrogen gas even after the stage of bottling till it was sold to the customers. The balance sheets and other financial statements of the three units revealed that whatever income they earned had gone to MACL in the form of lease rent of cylinders. One Mr. Sita Ram

Goswami, Accountant of MACL and Mr. Ashok Kumar, Chief Operating Officer of MACL admitted that some amount of cash was also collected by MACL over and above the invoice prices of Hydrogen gas supplied by three companies. It was noted that while front companies were being supplied gas by MACL @ 0.50 per unit, till August, 1996, the same gas was sold by the three companies @ Rs. 5/- per unit. Keeping in view all these factors the authorities were of the view that MACL had created the three companies with the fraudulent intention to avail benefit of exemption granted under Central Excise Notification No. 1/93, dated 28-2-1993 and has misdeclared the assessable value in the invoices with the intention to evade central excise duty.

The facts in the case of Modi Alkalies are different from the case in hand before us as in the case of Modi Alkalies (supra) the main company and three separate companies were incorporated. All the four companies in the same factory premises and they are having common pipeline. Directors of the three companies were the employees of Modi Alkalies and they were frequently changed. There were common staff and common plant and machinery. The finances of those companies were provided by Modi as unsecured loan and all the affairs were handled by Rajesh Boitra. The balance sheet revealed that whatever income have has gone to Modi Alkalies. These facts are distinguishable from the facts of the case in hand before us. Hence reliance by the DR is of no help to the Revenue. Further reliance of Navrang Art Printers has also no help to the Revenue as in that case also facts are somehow different. In that case this Tribunal has found having flowback in the case of 2-3 instances and in that case Navrang Art Printers (NAP) was situated at 108, 230, 231 and 233 Champaklal Indl. Estate and the other two units were not registered with the Central Excise at all. In that case, the two units were partnership firm and the third was a limited company having common directors and directors were having no knowledge of any

business. That is not in this case. Moreover, from the records it is observed that both the companies were having Central Excise Registration separately. It is a fact that at the time of investigation Vaibhav was not having Central Excise Registration. The show cause notice was also issued to club the clearance of Vaibhav with the appellants firm. We do not understand how Vaibhav was given separate Central Excise registration when on the department wants to club Vaibhav with the appellants firm. It clearly shows that the department has also found that appellants and Vaibhav are two separate entities."

11. We also take note of the fact that M/s. ADCL is manufacturing Poly Vinyl Acetate Emulsion which is raw material for M/s. SCPL and M/s. Emulsion Products who are manufacturing Synthetic Adhesive and therefore M/s. ADCL and other two units are not manufacturing the same goods and in fact, one is the raw material for the other and the goods manufactured by M/s. ADCL cannot be manufactured by M/s. SCPL and M/s. Emulsion. The case law relied upon by Ld. AR in the case Elemec Industries (supra) for deciding the issue in hand, is reproduced : -

"6. For the purpose of clubbing of clearances to determine the eligibility of small scale exemption the totality of the facts and circumstances had to be analysed. While with reference to isolated facts, the units may appear to be distinct and separate, but when the facts and circumstances are seen in totality seemingly distinct and separate units may turn out to be one common manufacturing entity.

While the financial flowback could be one of the important considerations, it could not be made the sole basis for arriving at the decision, this way or that way.

While the determining factor for clubbing of clearances is the true nature of relationship as between different units, the facts and circumstances of each case had to be appreciated. On the basis of the specific facts in a particular case, after the conclusions have been drawn, the case law could be cited to

support the conclusions; but such a matter which largely depends upon the facts and circumstances relevant to the issue, no decision could be arrived at only on the basis of decisions in other cases with facts and circumstances specific to them."

12. Admittedly the issue of clubbing or declaring dummy units should be examined in the light of facts of each case. In the case in hand, the constitution of firms is Private Limited and Partnership Firm, therefore, merely being a one person is common in all the units cannot be a ground for clubbing the clearances of all units. Further, all the units were having separate registration with Central Excise department, different Sales Tax registration, ESIC, etc. and having different trademarks and filing their IT Returns separately. In these circumstances, merely surrendering the Central Excise registration in the year 2002, the clearances of all the units cannot be clubbed. Therefore, after examining the facts and circumstances of the case, we hold that clearances made by all the three units cannot be clubbed altogether.

13. We find that the fact that all the three units have separate registration with the Central Excise department was well within the knowledge of department while granting the registration and surrendering the registration in the year 2002. In that circumstance, charge of suppression cannot be alleged against the appellants. Consequently, extended period of limitation is not invocable.

14. With these observations, we set aside the impugned order and allow the appeals with consequential relief, if any."

9.5. The same issue was also examined by the Tribunal at Mumbai in the case of *Plasto Containers (India) P. Ltd. Vrs. Commissioner of C.EX., Nagpur [2011 (268) E.L.T. 509 (Tri.-Mumbai)]*, wherein the following observations have been made: -

"29. The Id. advocate has submitted that the appellants are a private company and registered with Registrar of Company under Companies Act having two directors namely Ms. Rajni Agarwal and Ms. Urmila Agarwal and Vaibhav is also a private company registered under the Companies Act having two directors namely Shri Ramesh Agarwal and Shri Vishal Agarwal. The documents relating to registration of their companies and the certificate of registration issued by the Registrar of Companies are on record. It is also on record that there are no common directors. Both the companies are independently registered with sales tax department and filing independent sales tax returns. They are also registered with income tax department and filing income tax returns separately. Both the companies are maintaining their book of accounts accordingly independently having balance sheet and Profit and Loss A/c. Both the companies are having separate registration under the Factory Act and Provisional Tax registration. It is also on record that both the companies having separate factory premises such as appellants are situated at Plot no. J-3, MIDC, Village Digdoh, Hingna, Nagpur and M/s. Vaibhav is on Plot J-2, MIDC, Digdoh, Nagpur. They are having separate water connection and separate electricity connections. Both the units are having separate lease deeds executed between them and MIDC. Both the companies are paying local taxes to local gram panchayat separately. Both the companies are having separate machinery and are manufacturing separate goods such as the appellants firm is manufacturing water tanks of various sizes ranging from the capacity of 200 litre to 2000 litre and Vaibhav is manufacturing the water tank of various sizes ranging from the capacity of 3000 to 5000 litres. Both the companies are having their independent bank accounts. These facts are not in dispute as same are on record. The only j allegation that Shri Vishal Agarwal is managing the affairs of both the companies which cannot be concluded that both the companies are one and the management of both companies is same. There is no common director in the company. As both the units are having common storage tank cannot be the ground to club their clearances as a separate account is being maintained for withdrawal of kerosene and LDO by common storage tank of both the companies. The common storage tank was installed to minimise the costs. As Vaibhav does not

have extruder machine but they have entered into an agreement of job work with the appellants to carry out some process of manufacturing on job work basis. This agreement is also part of the record. The adjudicating authority has not given any finding on the same. Now, we come to the case law relied upon by the Id. advocate.

30. In the case of Supreme Washers (supra) both the parties relying on the said decision. In fact in that case, there was only one legal entity having three different units. The three units, in that case, procured raw materials together from common suppliers and had common stock accounting and planning, had inter-dependent manufacturing operations, had common stock of raw materials and semi finished goods, had common use of the machinery between the three units, had common marketing arrangements and free flow of finance between themselves. On these set of facts, the Hon'ble Supreme Court upheld the view taken by this Tribunal that there was mutuality of interest and inter-dependence between the three units. However, in the facts of the present case, no such factors exist to hold that there was mutuality of interest between appellants and Vaibhav. Both are private limited companies. There is not even an allegation in the show cause notice to the effect that they have common credit facility, common clearance, common vendors, common market arrangements and common machineries used between the two companies so as to prove inter-dependence. Hence, the said decision cannot be held to be applicable in the present case. In fact in that case Apex Court relied upon Circular No. 6/92 dated 29-5-1992 which clarifies that each limited company is a manufacturer by itself and will be entitled to a separate exemption limit. The adjudicating authority has lost sight to give any finding on these.

31. In the case of Jifcon Tools Private Limited v. CCE - [2007 \(208\) E.L.T. 345](#) (supra) wherein it was held that the clearances of private limited companies cannot be clubbed. Further in the case of CCE v. Sotex (supra) the Apex Court held the view taken by the Tribunal by holding that clearances of two units cannot be clubbed in the following circumstances. Both units have their funding and financial arrangement; held separate central excise registration, SSI registration, income tax and sales tax registration separately, purchasing raw material

*independently and also selling their goods to various purchasers independently, maintaining books of accounts separately for purchase and sale of finished goods; obtaining separate loans and credits from various banks; subjected to tax audit under Section 44 of the Income Tax Act; holding separate licences under the Factories Act and have their own separate supervisors and own separate labour. Further, in the case of Superior Products (supra), this Tribunal held that when two assesseees are legally understood juridical persons, one was a registered Partnership firm and another limited company, the clearances could not be clubbed. It was further held that directors of a company or partners of the partnership firm should not necessarily actively involve themselves in managing the manufacture is not correct in law. Not all directors or partners have to be engaged in managing companies or partnerships. Hence, if one director is managing both the entities cannot be a reason when both have separate capital, premises, machinery and labour. Both were carrying out separate operations. It was further observed that commonality of share holders and Partners and a common manager do not destroy the separateness of the two units. Further, the facts that they are manufacturing the same product or that one unit purchases a material from the other on commercial terms also do not go against their separate identity as manufacturers. In that case, the contention of the DR that both units were manufacturing same product, both units are also getting their goods partially manufactured from each other and both units were managed by the same person were rejected by this Tribunal. On appeal filed by the Revenue, the Hon'ble Supreme Court vide detailed judgment reported at [2008 \(230\) E.L.T. 3](#) (S.C.) rejected the appeal filed by the Revenue on the ground that account of the both the units were having separate managements, both units have separate capital, premises, machineries and labour. In *Shakti Tubes Limited v. CCE* - [2002 \(150\) E.L.T. 359](#), this Tribunal held that Shakti Steel Pipes cannot be called a camouflaged unit on the ground that there existed a common boundary wall and common management and the wall separating the two Units is only three to four feet ahead and there existed common Memorandum of Articles and a common Balance Sheet. The assessee in that case did not deny these facts. However, the Tribunal held that Shakti Steel Tubes is a sister concern of M/s.*

Shakti Tubes Limited, was independent factory having its own complete machinery required for galvanization and engaging its own independent staff. The transactions between the two companies were at arm's length and on principal to principal basis and thus, the tribunal concluded that Shakti Steel Pipes Limited was not a dummy Unit. The appeal in that case are rejected by the Apex Court.

32. *In the case of Studioline Interior Systems Pvt. Ltd. v. CCE - [2006 \(201\) E.L.T. 250](#), this Tribunal held out of the three units, two were Private Limited Companies and one is a Partnership firm. Each unit had its own premises and was registered with Central Excise and Sales Tax Authorities. In these circumstances, the Tribunal held that the clearances of the three units could not be clubbed solely on the ground that there were common Directors/partners. Similar view have been taken in the case of Shree Krishna Minerals v. CCE - [2005 \(190\) E.L.T. 251](#).*

33. *In the show-cause notice it is also alleged that there is a financial flow of funds from the appellants to Vaibhav and vice versa and there is mutuality of interest, from the records it is clear that both the companies are having separate bank accounts and Vaibhav have taken some money as a loan from the appellants and same was repaid by Vaibhav to appellants along with interest and it is not a case of interest free loan. All the transactions were done by cheques only. In that case the mutuality of interest is not present.*

34. *In the case of CCE v. Electro Mechanical Corporation (supra) the Apex Court held that if there is no evidence to prove that there was mutuality of business interest or there was flow back of funds from one unit to another, it is not possible to hold that clearances of two units could be clubbed. The Hon'ble Rajasthan High Court in the case of Renu Tandon v. Union of India - [1993 \(66\) E.L.T. 375](#). (in the facts, two units were situated in the same premises, manufacturing similar products, having common management, having common office and labour, having common electric connection and one unit was owned by father-in-law and other by daughter-in-law and both the units were being looked after by husband.) held that value of clearances could be clubbed unless mutuality of interest in the business of each other is proved by the Revenue. In this case the Revenue has failed to*

prove through evidence that there is a mutuality of interest. Reliance in the case of Modi Alkalies by the DR is of no help to the facts of this case as in that case the facts are somehow different which are reproduced hereunder :-

M/s. Modi Alkalies & Chemicals Ltd. (in short 'MACL') is engaged in the manufacture of caustic soda of which Hydrogen gas is a by-product. The Central Excise Authorities noticed that in reality MACL was engaged in the manufacture of Hydrogen gas falling under sub-heading 2804.90 of the schedule of the Central Excise Tariff Act, 1985 (in short Tariff Act'). But with a view to evade payment of excise duty it floated three front companies, namely, respondent nos. 2 to 4 i.e. M/s. Mahabaleshwar Gas & Chemicals Pvt. Ltd. (for short 'MGCPL'), Shri Chamundi Gas and Chemicals Pvt. Ltd. (for short 'SCGCPL') and M/s. Nippon Gas and Chemicals Pvt. Ltd. (for short 'NGCPL'). All the three front companies were in vicinity of the factory of MACL. What in reality happened was that through pipelines Hydrogen gas was sent to the three front companies for compressing and bottling the gas. The sole object was to avail benefit of exemption given to small scale industries under the Central Excise Notification No. 1/93, dated 28-2-1993 and thereby evade payment of central excise duty. With a view to unravel the truth, Director General of Anti-Evasion (for short 'DGAE') searched the factory and office premises of MACL and the three front companies on 27-9-1996. It was found that all the three bottling units were located in one single shed and were separated from each other by small brick walls of about 4 ft. height. The Directors of the three front companies were employees of either MACL or other Modi Group of companies and they were frequently changed. They had common staff for maintenance of records, and operation of the units. The main plant and machinery i.e. cylinders had been supplied only by MACL and the total finance was provided by MACL as unsecured loans or had been arranged by finance companies whose whereabouts were not even known to the Directors of the three

front companies. Marketing of the products was done by one Ritesh Beotra, a so-called Director of SCGCPL who was working as Deputy Manager (Marketing) in M/s. Modi Gas & Chemicals Sales Depot at Delhi. He was marketing various gases manufactured by a Modi group concern and was answerable as an employee of MACL. It was, therefore, concluded that MACL had control over Hydrogen gas even after the stage of bottling till it was sold to the customers. The Balance-sheets and other financial statements of the three units revealed that whatever income they earned had gone to MACL in the form of lease rent of cylinders. One Mr. Sita Ram Goswami, Accountant of MACL and Mr. Ashok Kumar, Chief Operating Officer of MACL admitted that some amount of cash was also collected by MACL over and above the invoice prices of Hydrogen gas supplied by three companies. It was noted that while front companies were being supplied gas by MACL @ 0.50 per unit, till August 1996, the same gas was sold by the three companies @ Rs. 5/- per unit. Keeping in view all these factors the authorities were of the view that MACL had created the three companies with the fraudulent intention to avail benefit of exemption granted under Central Excise Notification No. 1/93, dated 28-2-1993 and has mis-declared the assessable value in the invoices with the intention to evade central excise duty.

The facts in the case of Modi Alkalies are different from the case in hand before us as in the case of Modi Alkalies (supra) the main company and three separate companies were incorporated. All the four companies in the same factory premises and they are having common pipeline. Directors of the three companies were the employees of Modi Alkalies and they were frequently changed. There were common staff and common plant and machinery. The finances of those companies were provided by Modi as unsecured loan and all the affairs were handled by Rajesh Boitra. The balance sheet revealed that whatever income have has gone to Modi Alkalies. These facts are distinguishable from the facts of the case in hand before us. Hence reliance by the DR is of no help to the Revenue. Further reliance of

Navrang Art Printers has also no help to the Revenue as in that case also facts are somehow different. In that case this Tribunal has found having flow back in the case of 2-3 instances and in that case Navrang Art Printers (NAP) was situated at 108, 230, 231 and 233 Champaklal Indl. Estate and the other two units were not registered with the Central Excise at all. In that case, the two units were partnership firm and the third was a limited company having common directors and directors were having no knowledge of any business. That is not in this case. Moreover, from the records it is observed that both the companies were having Central Excise Registration separately. It is a fact that at the time of investigation Vaibhav was not having Central Excise Registration. The show-cause notice was also issued to club the clearance of Vaibhav with the appellants firm. We do not understand how Vaibhav was given separate Central Excise registration when on the department wants to club Vaibhav with the appellants firm. It clearly shows that the department has also found that appellants and Vaibhav are two separate entities.

35. From the above discussion, we hold that as both the units are having separate directors, separately registered with Registrar of Companies, separate sales tax registration, income tax, bank account, and separate lease deed with MIDC and are having separate premises also. In that event the clearance of both units cannot be clubbed. Accordingly, the impugned order clubbing the clearance made by Vaibhav in the clearance of appellants firm is set aside."

9.6. A perusal of the aforesaid judgements clearly indicates that merely because one person is a common Director in both the units, the same cannot be a ground for clubbing the value of clearances of both the units. Also, both units are having common office cannot be a ground for clubbing the value of clearances of both the units. Further, we observe that the investigation has not brought in any other evidence on record to club the value of clearances of both the units MM and MMPL. Accordingly, it is clear

that both the units MM and MMPL have independent existences and their value of clearances cannot be clubbed for the purpose of extending the benefit of the Notification No. 8/03-C.E., as amended.

9.7. In view of the above, we hold that the demands of central excise duty confirmed in the impugned order by clubbing the value of clearances of both the units i.e., MM and MMPL, are not sustainable and hence, we set aside the same. Since the demands of duty are not sustained, the question of demanding interest or imposing penalties thereon does not arise and hence the same are also set aside.

10. The appeals filed by the appellants are disposed of on the above terms, with consequential relief, if any, as per law.

(Order pronounced in the open court on **23.07.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd