रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद– 380015. :

क फाइल संख्या : File No : **V2(39)90&91/Ahd-III/2015-16/Appeal-I** 7971 to 2926

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-143 to 144-16-17**

दिनाँक Date : **28.10.2016** जारी करने की तारीख Date of Issue 10/11/16

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals-I)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-MSC-021-15-16** Date: **18.12.2015** Issued by: Additional Commissioner, Central Excise, Din: Kalol, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. S.Kumar Computers P. Ltd. & Shri Nimish Sharad Hansoti Managing Director

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त, अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

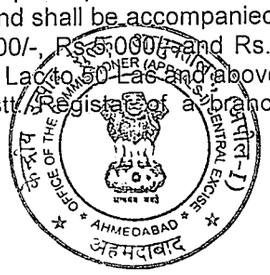
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से वचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

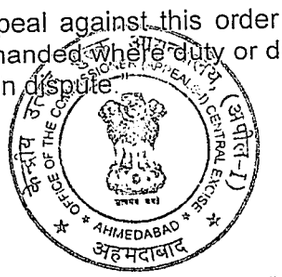
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→**Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.**

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



ORDER-IN-APPEAL

M/s. S Kumar Computers Private Limited, Plot No. 552, Rakanpur, Tal. Kalol, District Gandhinagar, Gujarat[for short the '*appellant-1*'] and Shri Nimish Sharad Hansoti, Managing Director of appellant-1 and authorized signatory of M/s. Wonder World Inc. [for short '*appellant-2*'] both have filed appeals against OIO No. AHM-CEX-003-ADC-MSC-21-15-16 dated 18.12.2015, passed by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate [*for short 'adjudicating authority'*].

2. Briefly stated, the officers of Central Excise, Preventive, Ahmedabad-III booked a case against appellant-1. After completion of investigation, a show cause notice dated 3.12.2013 was issued, *inter alia*, alleging that appellant-1 had floated a dummy unit in the name of M/s. World Wide Inc [for short "*M/s. WWI*"]; that they had cleared goods manufactured by them under their invoices and under the invoices of M/s. WWI to remain within the SSI threshold limit; that they had cleared soft PVC gift articles under the description of PVC labels; that appellant-1 had cleared goods under delivery challans without preparing sales invoices; that appellant-1, was controlling M/s. WWI. The show cause notice, therefore, proposed clubbing the clearances of the appellant-1 and M/s. WWI and demanded Central Excise duty along with interest and further proposed penalty on appellant-1 and appellant-2.

3. The adjudicating authority, vide his impugned OIO dated 8.12.2015, concluded that the appellant-1 [a private limited company] had created M/s. WWI [a proprietary firm] with an intent to manufacture and clear excisable goods without payment of duty, primarily to remain within the threshold limit for availing SSI exemption, by both these units. He therefore confirmed the demand along with interest and also imposed penalties on appellant-1 and 2.

4. Feeling aggrieved, appellant-1, has in his appeal, against the aforementioned OIO dated 8.12.2015, raised the following contentions:

- value of clearances of a proprietary concern cannot be added to the value of clearance of Private Limited Company, as both are separate legal entity;
- the two entities had facilities to manufacture goods independently; that manufacturing activities are being carried out in each premises; that the two units were not even remotely interconnected;
- that making entries in one common register for dispatch of goods is not a ground for considering both the units as one;
- that monetary transactions between M/s. WWI, its proprietor and appellant-1 were in the form of soft loans and its repayment; that the transfer of money from appellant-1 to M/s. WWI and vice versa, clearly proves that there is no flow back;
- that since there is no financial flow back, financial control, sharing of profit between two units the value of clearance of both the units cannot be clubbed; that they wish to rely on the following case laws:
  Jindal Steel Fabricators[2005(180)ELT238], Padma Packages [1997(90) ELT 375], Unity Industries [2006(193) ELT 314], P. K.Industries [2004(163) ELT 204], Superior Products [2002(142)ELT 187, Jifcon Tools P Ltd [2007(208) ELT 345], Prima Controls [1994(72) ELT 703], Standard Watch Company [2000(119) ELT 703, Bombay Neon Signs [2003(166) ELT 102], Saint Laboratories [2006(201) ELT 85], National Adhesive and

Chemicals [2007(208) ELT 361], Deep Hyote Paints Industries [2000(117) ELT 223], Bentex Industries [2003(151) ELT 695], Studioline Interior Systems [2006(201) ELT 250], Vaspar Concept (P) Ltd [2006(196) ELT 95].

- that there is no evidence to suggest that the entire goods were manufactured in one factory; that they would like to rely on the case laws of Balsara Hygiene[2012(278) ELT 526], Goyal Fibres [2009(234) ELT 108], Satyanarayana Plastic Agency [2010(249)ELT 433], Spick N Span Steel Wools P Ltd [2011(274) ELT 568], Super Star [2002(148) ELT 854], Gilt Pack Limited [2005(189)ELT 351], S C Patel [2011(264) ELT 414], Coimbatore Engineering Works[2009(239) ELT 366], Techno Device [2009(243) ELT 79], Auto India [2007(213) ELT 436].
- the value of Rs. 43,45,300/-, towards value of key rings in respect of the year 2011-12 relating to trading, has been included in the value of manufactured clearance;
- that no notice is issued to M/s. WWI; that in this connection they wish to rely on the case of Ogesh Industries[1997(94) ELT 88], SKN Gas Appliances [2000(120) ELT 732], Ramsay Pharma [2001(127) ELT 789], Premier Printers [2000(126) ELT 788], Shree Krishna Minerals [2005(190)ELT 251], Asian Industries [2002(139)ELT 391], Sethia Foods [2003(156) ELT 395], Arofine Polymers Limited [2007(214)ELT 241], Sri Chakra Cement Limited [2007(217) ELT 255], K R Balachandran [2003(151)ELT 68], A Z Electronics [2001(134)ELT 689].

4.1 Appellant-2, feeling aggrieved by the impugned order, has also filed an appeal primarily against the imposition of penalty on the following grounds:

- that the appellant-2 is a party to the case only because he is the Managing Director of appellant-1;
- the submissions made be appellant-1 may be considered while deciding the penalty against appellant-2;
- that the notice against appellant-2 deserves to be set aside;
- that they wish to rely on the case laws of Bhimraj Rathore [1994(74)ELT 810], Standard Pencils[1996(86) ELT 245], Corner Stone Brands Ltd [1996(86) ELT 257], Killick Nixon Ltd [1998(97) ELT 436], Ashok Engineering Works [1998(98)ELT 659], Aarti Steel Industries [2010(262) ELT 462], Manojkumar Pani [2010(260) ELT 92] and Vision Mattel Aids [2011(264) ELT 323].

5. Personal hearing in the matter was held on 19.10.2016. Shri M.H.Raval, Consultant, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. He submitted additional submissions wherein the same contentions were raised which have already been made in the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments, raised during the course of personal hearing.

7. The primary issue to be decided is whether the clearances of appellant-1 and M/s. WWI can be clubbed and thereafter whether the aggregate clearance of the so clubbed value is to be taken into consideration for availing the benefit of Notification No. 8/2003-CE dated 1.3.2003.

8. The adjudicating authority in his OIO concluded that the appellant-2 had planned the manufacture in one unit and split the production by creating a proprietary firm to show the existence of such a firm with the sole objective to remain within the exemption limit, prescribed vide notification No. 8/2003-CE dated 1.3.2003. His conclusions were based on the following:

- that all decisions in respect of appellant-I, was taken by appellant-2; that M/s. WWI was essentially run by appellant-2, as its authorized signatory; that the entire work relating to

sales, purchase, production & marketing of both [appellant-1 and M/s. WWI] was under the control of appellant-2;

- M/S. WWI was accommodated in the premises of appellant-1;
- appellant-1 had the facility and machineries to prepare the dies or moulds which was used for manufacture of final products eventually cleared by both the appellant-1 and M/s. WWI;
- as per the panchnamma drawn on 10.2.2010, there was no CNC machine in the premises of M/s. WWI and therefore, they did not possess the facility to manufacture the final products;
- that dispatch registers contained detail of party's name, product name, quantity, bill number, bag/box, receipt number and name of the courier in respect of both the units which clearly showed that a single entity was engaged in the procurement of orders, production of goods, dispatch;
- in the 27 note books wherein production details were recorded, there is no clue as to the identity of the manufacturer; that appellant-2 has admitted that it is practically not possible to segregate or separate the books for each unit or correlate it with the sales invoices;
- though purchases was made in the name of both units and sales invoices were issued in the name of both units, raw materials purchased by one unit was used in the manufacture of final products eventually cleared under the invoices of any of the two units under reference;
- the entire functioning of both the units have been under the same management and the funds were also used as if both firms are a single entity;
- the clearances, were managed in such a way that both the units were within the exemption limit, prescribed by notification, *ibid.*

9. The revenue's contention for clubbing the clearances of the appellant-1 and M/s. WWI, *inter alia,* is based on Sr. No. 2(v) to Notification No. 8/2003-CE dated 1.3.2003, which states that '*where a manufacturer clears the specified goods from one or more factories, the exemption in his case shall apply to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each factory*".

10. Rather than refute the allegations one-on-one, appellant-1, has only stated that there is no financial flow-back; that the amounts transferred were soft loans being provided; that entries in a common register cannot be a ground for considering both the units as one. I find that the show cause notice [para 37] clearly lists the financial flow back between the two units. To counter it with an averment that these were nothing but soft loans, is only an after-thought. The appellant has not produced any proof to substantiate his claim. In case it was so, surely there would have been some mention of it in their financial records viz. Balance sheet, etc.. In-fact the staff/employees, appellant-2, were never bothered to maintain separate records, since for them, it was a single entity. The setting up of a proprietary concern [incidentally owned by the wife of appellant-2] was only to hoodwink tax authorities. It is therefore, not surprising, that even in case of this proprietary concern [M/s WWI], all the controls were with appellant-2. Through this arrangement, appellant-2 managed both the units. Further, it is not understood as to how, M/s. WWI would have maintained records when they did not know what their production was, what their clearances/dispatch were. How could the two units have kept proper control, known their financial position, when there was no separation of records. In-fact, the appellant-2 in his statement recorded on 1.3.2013, has on being shown the 27 production note books,

confessed that though they relate to record of production of goods of 'both the units', it was practically not possible to segregate or separate the books for each unit or co-relate it with sales invoices. No prudent management would keep such a dubious practice, especially when they claim that these are two separate units, not interconnected. It was probably because of this reason that the auditors put a note in the balance sheet [as on 31.3.2009] of the appellant-1, to the effect that they had not maintained quantitative details of the production, sales and closing stock of finished goods.

11. In this background, the argument of appellant-1, that the two units were having separate premises, were registered with sales tax, had separate bank accounts, separate electricity connections, etc. and therefore, their value of aggregate clearance cannot be clubbed, would be of no avail. In fact, the Hon'ble Supreme Court of India, in the case of M/s. Modi Alkalies [2004(171) ELT 155], relating to clubbing, has held as follows [the relevant extracts]

> *8. Whether there is inter-dependence and whether another unit is, in fact, a dummy has to be adjudicated on the facts of each case. There cannot be any generalization or rule of universal application. Two basic features which prima facie show interdependence are pervasive financial control and management control. ..... Almost the entire financial resources were made by MACL. The financial position clearly shows that MACL had more than ordinary interest in the financial arrangements for companies. The statements of the employees/Directors show that the whole show was controlled, both on financial and management aspects by MACL. If these are not sufficient to show inter-dependence probably nothing better would show the same. The factors which have weighed with CEGAT like registration of three companies under the sales tax and income tax authorities have to be considered in the background of factual position noted above. When the corporate veil is lifted what comes into focus is only the shadow and not any substance about the existence of the three companies independently. .....*

12. The averment that the clearances of a proprietary concern and a Private Limited Company cannot be clubbed- both being a separate legal entity, would hold true, only in case the firms were not dubious. The proprietorship in this case was created, wholly owned and controlled by appellant-1 as is evident from the findings above, with the sole objective to remain below the threshold limit.

13. The appellant-1 has further alleged that there is no evidence to suggest that the goods were manufactured in one factory. In the panchnama itself it is recorded that no CNC machine was installed at the premises of M/s. WWI. It is on record that the dies/moulds in respect of M/s. WWI were manufactured at the premises of appellant-1 without any consideration. I do not think that any further primary evidence is required to prove that the goods were manufactured in one factory. The testimonials of the employees, officers, the registers maintained at the gate clearly shows that the whole set up functioned as one factory. The purchase of raw materials, clearances shown via different units i.e. WWI and appellant-1, was only to hoodwink the tax authorities and avail the benefit of SSI. In-fact, the existence of two firms was only imaginary, not recognised by the

employees maintaining receipt of raw materials, the production in-charge and the employees looking after dispatch of finished goods.

14. The appellant has relied upon a catena of case laws, which I would like to discuss :

[a]Jindal Steel Fabricators[2005(180)ELT238],
Padma Packages [1997(90) ELT 175],
Jifcon Tools P Ltd [2007(208) ELT 345],
Prima Controls [1994(72) ELT 62],
Studioline Interior Systems [2006(201) ELT 250],
Goyal Fibres [2009(234) ELT 108].
Satyanarayana Plastic Agency [2010(249)ELT 433].
Spick N Span Steel Wools P Ltd [2011(274) ELT 568].
Super Star [2002(148) ELT 854].
Gilt Pack Limited [2005(189)ELT 351].

It is not mentioned by the appellant as to how the rationale in respect of these cases would be applicable to their dispute. Further, in none of the above case, the dispute was in respect of clubbing of clearances of a Private Limited Company and a Proprietary firm. Since this basic fact does not match with the dispute at hand, the above cases, relied upon by the appellant stands distinguished.

[b] P. K.Industries [2004(163) ELT 204],
Bombay Neon Signs [2003(166) ELT 102].
Saint Laboratories [2006(201) ELT 85].
National Adhesive and Chemicals [2007(208) ELT 361]
Deep Hyote Paints Industries [2000(117) ELT 223].
Bentex Industries [2003(151) ELT 695]
Vaspar Concept (P) Ltd [2006(196) ELT 95].
S C Patel [2011(264) ELT 414],
Coimbatore Engineering Works[2009(239) ELT 366]
Auto India [2007(213) ELT 436].

In these cases, clubbing was set aside primarily on the ground
[a] that close relationship between persons controlling unit not enough unless finances from second firm flowed from first firm and
[b] Revenue had failed to produce evidence of financial flow back.
However, since in the current dispute, Revenue has established that there was flowback of money between the appellant-1 and M/s. WWI, these case laws stand distinguished.

[c]Unity Industries [2006(193) ELT 314].
In this case it was held that units with separate SSI/Central Excise registration, audited balance sheets and located geographically apart, their clearances cannot be clubbed together on the ground that they were under total control of one person. In this case, M/s. WWI was not registered with the department. The facts of this case is not similar to the one presently under dispute.

[d]Superior Products [2002(142)ELT 187].
In this case it was held that one partner not to be treated as manufacturer of both units merely because that partner manages both units as both units were having separate capital, premises, machinery and labour and carrying out separate operations. The present dispute is different in so far as there was no adequate machinery, the labour/manpower was common in respect of both the units.

15. The next contention raised by the appellant is that for the year 2011-12, duty is sought on the value of Rs. 43,45,300/- which was pertaining to trading of *key rings* in respect of clearances effected by M/s. WWI. The adjudicating authority in paras 110 to 113 of the impugned OIO has recorded his findings wherein after examining the documents submitted by the appellant, the contention was rejected. The crux of the finding was that there was a huge difference, between the purchase price and the sale price of the product

viz. *key rings*. The adjudicating authority, has recorded that a key ring purchased for Rs. 22/- was sold for Rs. 100/-. It is a 354% profit earned on the purchases. This profitable trading, accounted for 24% of M/s. WWI's total sale for the said financial year. The figures are baffling. Looking to the data concerned, I agree with the findings of the original adjudicating authority, wherein he rejected the claim, to consider this amount as trading sales. This contention is therefore rejected, since it lacks merit.

16. The appellant has further contended that since no notice was issued to M/s. WWI, the show cause notice dated 3.12.2013, is not sustainable. This contention at the outset, lacks merit. The notice though not specifically addressed to M/s. WWI was in-fact addressed to Shri Nimish Sharad Hansoti, Managing Director of appellant-1 **and authorized signatory of M/s. WWI, Kalol**. It is clearly mentioned in para 43 of the show cause notice, that in response to the summons issued to the proprietor of M/s. WWI, Smt Nita Nimish Hansoti, she submitted a letter, authorizing her husband Shri N.S.Hansoti to appear on behalf of her. It is on record that it was appellant-2, who was looking after the day to day functioning of M/s. WWI, a proprietary concern. In-fact, he was performing the role of a proprietor, based on the authorization issued to him by his wife. In case of a proprietorship, both the proprietor and the proprietary concern are considered to be one in law. Since the notice was specifically marked to him in his capacity also as the authorized signatory of M/s. WWI, it is not a prudent argument to now contend that no separate notice was issued to M/s. WWI. Even otherwise, the proprietary concern was aware of the notice. Had it not been the case, they would not have challenged the the figures in respect of 2011-12, through the grounds submitted by appellant-1. This also dispels the argument, that appellant-1 and M/s. WWI, were two different entities. In view of the foregoing, I do not find any merit in the argument that since the show cause notice was not marked to M/s. WWI it is not sustainable, especially since the show cause notice was marked to appellant-2, in his capacity as the authorized signatory of M/s. WWI and grievances as far as computation of duty in respect of clearances made by M/s. WWI, were raised by the appellant-1 before the concerned authorities.

17. The appellant as is the norm, has relied on a catena of case laws to drive home the point that since no show cause notice is issued to M/s. WWI, the show cause notice fails. However, the eleven case laws stand distinguished since the facts differ. In none of these cases was clubbing proposed between a proprietorship and a Private Limited Company. Further, in the present dispute the show cause notice was marked to the authorized signatory and M/s. WWI had challenged the figures in respect of FY 2011-12. In-fact, the Hon'ble Supreme Court in the case of V Madhu [2002(146) ELT 252], on the question of joint notice, has held as follows:

Show cause notice - Joint notice for fictitious or dummy units - Splitting up of the show cause notice of two units not necessary when the stand of the department is that one firm is a fictitious business firm or a dummy of the other - At the stage of issuance of show cause notice, particularly when the view of the department is that one firm is fictitious business firm or a dummy of the other, it would be more easier and appropriate to examine the matter together - Quashing of show cause notice by the High Court is not proper - Section 11A of Central Excise Act, 1944. *[paras 6, 7]*

18. Appellant-2, has in his grounds, stated that he is not liable for penalty under Rule 26 of the Central Excise Rules, 2002. However, I find that he was directly involved in floating a dummy unit in the name of M/s. WWI to clear excisable goods manufactured by appellant-1 under the invoice of M/s. WWI to avail the SSI exemption; that he was instrumental in suppressing the manufacture and clearance of excisable goods manufactured by appellant-1 and also that he was directly concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing and that he was aware that the goods were liable for confiscation. I further find that the adjudicating authority has held the goods to be liable for confiscation but refrained from imposing redemption fine since the goods had already been removed. The argument of appellant-2, therefore, that since he had not physically dealt with the goods and since the goods were not confiscated, no penalty under rule 26, *ibid*, can be imposed, is not a correct reading of facts. The argument being devoid, in so far as facts are concerned, lacks merit and is therefore rejected.

19. Again, the appellant-2, has relied upon a catena of case laws to contend that no penalty is imposable. I would like to discuss these case laws:

[a] Bhimraj Rathore [1994(74)ELT 810]. The facts, the rules under which penalty is imposed, in this case do not match with the dispute in the present case.

[b] Shree Nath Cement Industries [1993(74) ELT 142]. This case relates to penalty under Rule 209A of the erstwhile Central Excise Rules, 1994. Even the facts do not match with the present dispute.

[c]Corner Stone Brands[1996(86)ELT 257]. This case relates to penalty under Rule 209A of the erstwhile Central Excise Rules, 1994 and the case pertains to valuation.

[d]Standard Pencils [1996(86)ELT 245], Killick Nixon Limited [1998(97)ELT436] and Ashok Engineering Works [1998(98)ELT 659]. These cases relate to penalty under Rule 209A of the erstwhile Central Excise Rules, 1994, while in the present dispute, penalty was imposed under Rule 26 of the Central Excise Rules, 2002.

[e]Aarti Steel Industries [2010 (262) ELT 462], Manojkumar Pani [2010(260) ELT 92] and Vision Mattel Aids Private Limited [2011(264) ELT 323]. These case law differ from the dispute at hand since in the present dispute it is clearly held that appellant-2, had floated the dummy firm; that the appellant-2 was directly concerned in transporting, removing, depositing, keeping, concealing, selling and purchasing in respect of goods which were held liable for confiscation. Therefore, the rationale of these cases cannot be made applicable since the facts, differ from the facts in the present dispute.

20. In view of the foregoing, the appeals filed by both appellant-1 and appellant-2 are rejected and the impugned OIO dated 18.12.2015, is upheld.

केन्द्रीय उत्पाद शुल्क अपील आयुक्त (अपील-I) OFFICE OF THE COMMISSIONER (APPEALS), CENTRAL EXCISE AHMEDABAD अहमदाबाद

21. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

21. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स - I)

Date : 28.10.2016

Attested

(Vinod Lukose)
Superintendent (Appeal-I)
Central Excise
Ahmedabad

BY R.P.A.D.

To,

1.M/s. S Kumar Computers Private Limited,
Plot No. 552,
Rakanpur, Tal. Kalol,
District Gandhinagar,
Gujarat.

2. Shri Nimish Sharad Hansoti, Managing Director
Managing Director of M/s. S Kumar Computers P Limited,
and Authorized Signatory,
M/s. Wonder World Inc.,
Rakanpur, Tal. Kalol.

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Deputy/Assistant Commissioner, Central Excise Kadi division, Ahmedabad-III.
4. The Additional Commissioner, System, Central Excise, Ahmedabad-III.
5. Guard File.
6. P.A.