



- आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क \*  
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटेकनिक के पास, आमबाबाडि,  
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/54/Ahd-I/2016-17/4219-4223  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-044-2016-17  
दिनांक 22.12.2016 जारी करने की तारीख Date of Issue 04/01/2017

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Addl. Commissioner, Div-II केन्द्रीय उत्पाद शुल्क, Ahmedabad-I द्वारा जारी मूल आदेश सं  
14/Addl.Commr./2007 दिनांक: 31-08-2007, से सृजित

Arising out of Order-in-Original No. 14/Addl.Commr./2007 दिनांक: 31-08-2007 issued by Addl.  
Commissioner, Div-II Central Excise, Ahmedabad-I

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s. Universal Engineers  
Ahmedabad

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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक  
के अंतर्गत पुनरीक्षण आवेदन अधीन 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, 4<sup>th</sup> 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 प्रक्रिया 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.

(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।



(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(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.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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 दिनांक 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 रुपये या उससे कम हो तो रुपये 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 अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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.

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. Registrar 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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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 notwithstanding the fact that the one appeal to the Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 a court fee stamp of Rs.6.50 paise 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 is 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

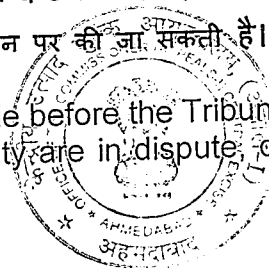
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

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।

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. Universal Engineers, Plot No. 136, Phase-I, GIDC, Vatwa, Ahmedabad (for short - 'appellant') had filed this appeal against OIO No. 14/Add. Commissioner/2007 dated 31.8.2007, passed by the Additional Commissioner, Central Excise, Ahmedabad-I Commissionerate (for short - 'adjudicating authority').

2. Briefly stated, the facts of the case are that consequent to a search, an investigation was conducted against the appellant culminating in a show cause notice being issued, wherein it was alleged that the appellant had manufactured and cleared 'road construction equipments' in the name of M/s. Riddhi Siddhi Enterprise [RSE] with a view to avail SSI exemption separately for both the firms and also in the name of M/s. Universal Road Equipments (a trading unit) (URE) under the guise of trading. The notice therefore, inter-alia, proposed clubbing the clearance value for computation of threshold limit and demanded central excise duty along with interest on clearances above the said SSI limit. The notice further proposed penalty on the appellant. Penalty under Rules 26 and 27 were also proposed on various persons and firms. This notice was adjudicated vide the impugned OIO wherein the demand was confirmed along with interest. Penalties were imposed on the appellant and other co-noticees. No penalty was however imposed on M/s. RSE and M/s. URE, since they were dummy units.

3. Feeling aggrieved, the appellant has filed this appeal, on the following grounds:

- that with the expansion in the activity, a new unit M/s. RSE was floated by the wife of the proprietor of the appellant;
- that since taking electricity connection was a lengthy procedure, M/s. RSE had to share electricity, office, management, labourers and machineries with the appellant firm; that from October 2003, the appellants firm was shifted to a new premises;
- that on perusal of fixed assets schedule in the Balance Sheet, it is evident that both the firms had separate;
- the appellant also furnished copy of financial accounts for the year 2002-03 to 2005-06 to demonstrate incurring various expenses in connection with manufacturing activities carried out by appellant firm and M/s. RSE;
- M/s. RSE was registered separately with Government authorities;
- that without proper investigation and without any corroboration, clearance value of M/s. URE has been clubbed with the clearance value of the appellants;
- the financial accounts reveal that there is no flow back of funds either from the appellant or from others and there is no sharing of profit;
- the financial control of M/s. RSE lies with the wife of the appellant and she has been solely controlling the funds of that firm,
- that they wish to rely on the following case laws :
  - Bombay Neon Signs [2003(166) ELT 102]
  - Poly Printers [202(139) ELT 295]
  - Alpha Toys Ltd [2002(141) ELT 119]
  - Superior Fabrics [2007(210) ELT 236]
  - Richardson and Cuddas [1999(107) ELT 386]
  - Modi Alkalies and Chemicals [2004(171) ELT 155]
  - Nu-Trend Business [2002(141) ELT 119]
  - Premium Packaging [2005(184) ELT 165]
  - Girish Electricals [2004(167) ELT 299]
  - National Adhesive and Chemicals [2007(208) ELT 361]
  - Saint Laboratories [2006(201) ELT 85]
  - Renu Tandon [1993(66) ELT 375]

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4. This appeal was decided by the then Commissioner(A) vide his OIA No. 86/2008(Ahd-I) CE/ID/Commr(A) dated 29.5.2008, wherein he set aside the original order dated 31.8.2007.

5. Feeling aggrieved, Department reviewed the OIA dated 28.5.2008 and filed an appeal before the Hon'ble CESTAT, raising the following contentions/grounds:

- o the OIA dealt with only the Balance Sheet and has not taken into account the statements and other corroborative evidences;
- o the proprietor of the appellant, has clearly admitted that both M/s. UE and M/s. RSE were operating from the same plot, using common capital goods, electricity and labour, having common management and that there was mutuality of interest between all the three firms.

6. The Hon'ble Tribunal vide its Order No. A/10506/2016 dated 8.6.2016, allowed Revenue's appeal by way of remand, with a following direction:

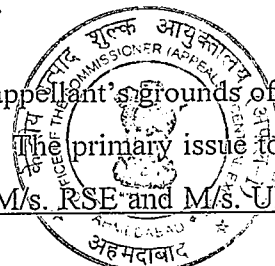
*4. We have carefully considered the records of the case and the submissions advanced by the learned Authorised Representative for the Revenue. On perusal of the impugned order, we find that the learned Commissioner(Appeals) mostly took shelter of the case laws in forming an opinion and the evidences collected by the Revenue in the form of statements and other financial documents, have not been analyse/examined to ascertain whether there is an inter se relationship between the two units, their financial transactions, day to day management etc.. In the result, we are of the opinion that the impugned order cannot be sustained. Accordingly, we set aside the impugned order and remand the case to the learned Commissioner(Appeals), to re-assess the evidences as brought out on record and also referred to specifically in the grounds of appeal and thereafter apply the principle of law to the said evidences while considering the eligibility of SSI exemption Notification No. 8/2003-CE dated 1.3.2003 to the Respondent."*

[emphasis supplied]

7. Based on the aforementioned direction of the Hon'ble Tribunal, personal hearing was held on 20.12.2016. Shri J.N.Bhagat, authorised representative along with Shri Krunal Vyas, appeared on behalf of the appellant and reiterated the grounds of appeal. Shri Virendra Singh, Superintendent, AR-III, Division-II, Ahmedabad-I Commissionerate, appeared, on behalf of the Department. The appellant also submitted additional submissions, raising the following contentions:

- o that the show cause notice was hit by limitation;
- o that the adjudicating authority demanded duty & imposed penalty from alleged dummy, thereby recognizing their independent existence; the impugned order needs to be set aside on this count;
- o the adjudicating authority has brushed aside vital evidences in the form of lease agreement on a stamp paper without conducting inquiry on correctness of the said documents;
- o that no material is brought on record by the department while conducting search to prove mutuality of interest or financial flow back;
- o the mere fact of management control or grant to use the premise or factory location is not sufficient to hold the units as a dummy unit in the absence of money flow back/or profit sharing and total control on other unit.;
- o the appellant has further relied on a catena of case laws.

8. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. The primary issue to be decided in this appeal is whether the clearances of the appellant, M/s. RSE and M/s. URE needs to



be clubbed for arriving at the dutiable clearance above Rs. One hundred lakh [which is exempted under notification No. 8/2003-CE dated 1.3.2003].

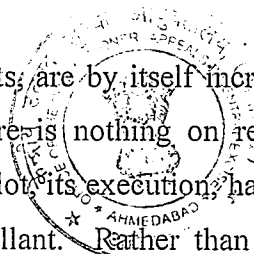
6. First to the facts. The following points are not in any dispute:

- o that only one unit had the facility to manufacture 'road construction equipment';
- o the entire work of manufacture, purchase, procuring of orders, sales, administration work of both the appellant and M/s. RSE were being looked after by the Proprietor of the appellant;
- o the manufacturing activity were carried out on the capital goods which belonged to the appellant; that no rent was charged by the appellant from M/s. RSE; that there was no separate electricity connection nor was there any separate labour/staff employed by M/s. RSE/M/s. URE;
- o the machineries installed at the premises taken on rent were not capable to manufacture entire complete set of road construction equipments;
- o the Balance Sheet of 2002-2003 and 2003-04 clearly shows that the capital goods installed at Plot no. 136, Phase I, Vatwa, belonging to the appellant; that they had claimed depreciation these machines; that when the unit was shifted for a brief period to Plot no. 519/2, Phase IV, GIDC, Vatwa, these machines remained at Plot no. 136 – where M/s. RSE was purportedly functioning;
- o that capital goods installed at Plot no. 136 where M/s. RSE functioned, was sold under invoice of the appellant, said to be functioning from Plot no. 519/2;

7. In addition to the above facts, which stand undisputed, , the Proprietor of the appellant has admitted that the activity of splitting the manufacture and clearance from M/s. UE to M/s. RSE was done with a sole intention to keep both the units within the SSI exemption limit of Rs. 100 lakhs; that inter transactions used to take place between the two units; that he and his wife had mutual interest in each other's unit and their transactions; that he was looking after entire activities of M/s. RSE and was also operating the bank account of M/s. RSE even before being granted the power of attorney by the proprietor of M/s. RSE [ie his wife]. He further expressed his inability to produce purchase documents of M/s. URE; he also stated that no books of accounts were prepared by M/s. URE.

8. The Tribunal while recording its finding, held that *"On perusal of the impugned order, we find that the learned Commissioner (Appeals) mostly took shelter of the case laws in forming an opinion and the evidences collected by the Revenue in the form of statements and other financial documents, have not been analyse/examined to ascertain whether there is an inter se relationship between the two units, their financial transactions, day to day management etc.."* It is precisely for this reason, that I have in paras 6 and 7 supra, reproduced very briefly, what has been deposed during the course of statement.

9. The aforementioned confessional statements; are by itself incriminating, more so since they have not been refuted till date. There is nothing on record that these statements have been retracted. I find that the entire plot, its execution, has been laid bare by the principle actor i.e. the proprietor of the appellant. Rather than the department alleging that the dummy firms were created to remain within the threshold limit, I find that it is the proprietor of the appellant who has himself confessed it in the statement dated 27.7.2006.



10. Even the financial records maintained by the appellant were not recording all the business transactions. In-fact, the proprietor of the appellant has admitted that no records in respect of M/s. URE, were kept. He was also not able to answer, as to why the payment made by the appellant to M/s. RSE was not figuring in the books of accounts. He also failed to produce invoices relating to purchase in respect of M/s. URE. This is indeed surprising since in the FY 2005-2006, M/s. URE had issued sale invoices to the tune of Rs. 22.90 lacs, without maintaining any records. This act of not maintaining accounts/records, defies prudence. It clearly shows the attempt being made to confuse investigations through non cooperation. It is therefore, clear that there was financial flow back. It was indeed to confuse authorities that crucial transactions were not recorded. There is no doubt that the proprietor was the main force behind the setting up of these units. He controlled the finances of M/s. RSE even before the power of attorney was granted. Funds used to flow between the units, which stands admitted. It is therefore evident that there was an inter se relationship between the units concerned, their financial transaction were intermingled and the day to day management was run by the same person. On re-assessing the evidences on record, I am left with no doubt, that [a] the units were dummy [b] they were specifically created only to remain within the threshold limit for availing SSI exemption.

11. In a similar case, M/s. Quality Steel Industries [1989(43) ELT 775 (Tri)] the Hon'ble Tribunal has allowed clubbing of two units, belonging to a husband and a wife, the relevant extract of which are reproduced below:

*16. These extracts do not leave any doubt that whatever be the other circumstances regarding capital, registration under other laws etc., Shri Rashid was the person on whose behalf production clearance, sales etc. all took place. These are by him and for his benefit which is to say for the benefit of his own and that of his family consisting of his wife and 11 children. We therefore, answer the first question in the affirmative and second question in negative.*

This order was upheld by the Hon'ble Supreme Court also.

11.1 The Hon'ble Tribunal in the case of Unique Resin Industries [1993(68) ELT 230] , on the question of common infrastructure , financed and managed by the same family, etc., has held as follows:

*8. Apart from common infrastructural facilities, like water, the units are adjacent to each other, located in the same compound, are financed and run by the same family and are being managed by same persons (namely, Shri Tushar Desai, Shri G.N. Rao and Shri C.G. Patel) under the directions of the head of the family Shri H.C. Parikh. Shri C.G. Patel and Dr. Tushar Desai were drawing their salaries from M/s. Unisets Industries, Valsad and Shri G.N. Rao was drawing his salary etc. from M/s. Usha Thermosets Pvt. Ltd. But they were looking after all the four units. The products are having common code numbers and all the four units have common sales network, and pricing which cannot be a mere coincidence or an accident and which would not be the case if the four units were genuinely independent as claimed. Thus the separateness of the four units is only a facade as held by the Collector.*

*9. Looking to the totality of the circumstances, there could be no doubt that there is common financial involvement and common control and supervision in respect of all the four units as envisaged in the Tribunal's decision relied upon by the appellants in the case of Meteor Satellite Ltd. and Telesat Electronics v. CCE Baroda - reported in 1985 (22) E.L.T. 271 (T) which is confirmed by the Apex Court - reported in 1989 (41) E.L.T. A105. Hence, even if it is accepted that*

*the test of mutuality is relevant only for the purpose of valuation, the clearances of the above four units have been rightly clubbed vide the Order-in-Original under reference as the test for "clubbing" as envisaged in the above case, is satisfied in the instant case.*

11.2 Further in the case of M/s. Best Systems Private Limited [1997(91) ELT 175], the Hon'ble Tribunal allowed clubbing of three units which were managed by one person. The goods in the said case were manufactured by one unit without raising any charges, the electricity was drawn from one unit for manufacture of the goods in other units without payment of electricity charges. The accounts were also centralised. The facts of the present dispute are similar except for the fact that the accounts were not centralized. I have no doubt in applying the rationale of this judgement to the case. The appellant in the present dispute, failed to record entries showing financial flow back. In case of the trading unit, the firm failed to provide the purchase invoices. I find that the department's allegation are based on facts, statements, corroborative evidences. The onus was therefore, on the appellant to refute the allegation. It is clearly evident that rather than fulfilling the onus, providing documentary evidences, the appellant has relied on the same accounts [which as per his own say had failed to record crucial entries] to prove that there was no financial flow back and that the units were not interdependent.

12. The appellant has surprisingly contended that show cause notice is barred by limitation. I find that this contention was never raised either before the adjudicating authority or the earlier appellate authority. However, I would still like to address it. I find that the demand in respect of the year 2001-2002 is in respect of the last invoice dated 25.3.2002 i.e. March 2002. The show cause notice was issued on 16.3.2007. An SSI, as per explanation to the first proviso to Rule 12 of the Central Excise Rules, 2002, is supposed to file quarterly returns. In this case, the relevant date for issue of show cause notice as per Explanation 1(b) of Section 11A would be five years from the last date on which such return was required to be filed. It is therefore, evident that the show cause notice was issued within time i.e. five years from the relevant date. The contention is therefore, rejected being without any merits.

13. The appellant has further stated that penalty has been imposed on alleged dummy units, thereby recognizing their existence. The argument is not correct in view of para 7.2 of the impugned OIO.

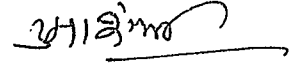
14. The appellant has quoted a plethora of case laws. Only the case laws with their citations are mentioned. How the said case laws are applicable, to the present dispute, is not mentioned. The appellant should have explained as to how the cited case laws, are applicable to this dispute. Surely, it is difficult to comment on the applicability since it is not known as to how the case laws are applicable. Even otherwise, I find that the aforementioned orders of the Tribunal are applicable to their case.



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15. In view of the foregoing, the impugned OIO is upheld in full. The appeal is rejected. This appeal has been decided on the basis of the direction of the Hon'ble Tribunal vide its order dated 8.6.2016.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
16. The appeal filed by the appellant stands disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स - I)

Date: 22/12/2016

Attested



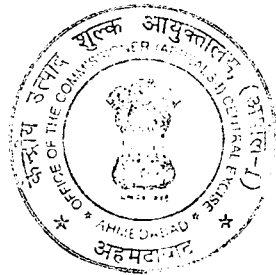
(Vinod Lukose)  
Superintendent (Appeal-I)  
Central Excise, Ahmedabad

BY RPAD.

To,  
M/s. Universal Engineers,  
Plot No. 136, Phase-I,  
GIDC, Vatwa,  
Ahmedabad

Copy to:-

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Principal Commissioner of Central Excise, Ahmedabad-I
3. The Additional Commissioner (System), Central Excise, Ahmedabad-I
4. The Deputy/Assistant Commissioner, Central Excise, Division-II, Ahmedabad-I
- ✓ 5. Guard file.
6. P.A



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