

VI Case laws in Small Scale Industries

Simultaneous availment of Cenvat and SSI exemption not permissible –

CBE&C has issued instructions that if a manufacturer manufactures various products, he has to avail Cenvat for all items or opt for exemption from Cenvat for all products. It is not permissible to avail Cenvat for some items and avail SSI exemption for other products. - CBE&C Circular F. No. 22/46/86-TRU dated 8-9-1986 - reiterated in Circular Nos. 9/93-CX.8 dated 24-8-1993 and 361/77/97-CX dated 3-12-1997.

Turnover of Manufactured goods and Trading goods cannot be clubbed for calculating Limits

Assessee who is manufacturing CPU and key board and Apart from that, he is also trading (purchasing and thereafter, selling as such) of Monitors and Printers. His aggregated clearances of CPU & Key Board (the FPs manufactured by him) during the FY 2004-05 is Rs 350 lacs. The turnover of Monitor and Printers for the same period is Rs 250 lacs. Held that the value, therefore, necessarily has to be in respect of clearances of goods manufactured by the assessee hence he is eligible for SSI Benefit. **C.M.S. COMPUTERS (P.) LTD. 2005 S.C**

Total value of excisable goods shall exclude amounts of excise duty, sales tax and other taxes, ie valuation as per sec 4 or valuation rules **Mahavir Metal Mart v. UOI 1997 (90) E.L.T. 20 (SC).**

More than one manufacturer in one shed - Numerous small units for manufacturing purposes hire one large shed and each small manufacturer uses a small portion of it. In such case, clubbing provisions will apply.

Facilities of one factory used on sharing basis - Facilities of one factory are shared by different manufacturers on time-sharing or other basis. In such cases, turnover of all those manufacturers will be clubbed together for calculating the excise exemption limits. - Indica Laboratories v. UOI - 1990 (50) ELT 210 (Guj).

Clubbing if change of ownership during the year - If ownership of factory changes during the year, clearances of previous owner as well as new owner during the year will be clubbed for calculating the value of clearances for purpose of SSI exemption - Gaurav Equipments (P.) Ltd. v. CCE - 1993 (CEGAT).

No Clubbing provisions if two factories belong to different owners/ two units are independent and no financial flow back -

Clubbing provisions do not apply if two or more units are genuinely independent units. if there are more than one factories and various combinations of ownership are:

- (a) Factors such as common location of factories, common expenses, common partners, common trade mark, sharing of machinery usage, mutual **financial transaction without interest** not enough to club clearances. **Jagjivandas & Co. v. CCE 1985 (19) E.L.T.441 (T) affirmed by Supreme Court in 1989 (44) E.L.T. A24.** This is a landmark judgment often used by assessee
- (b) One belonging to a Proprietor and other to a partnership firm, where proprietor is one of the partners **AC v. Jayanthilal Balubhai & Ors. 1978 (2) E.L.T. J317(SC)**

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- (c) One belongs to a partnership firm and other also to another partnership firm, where some partners are common and some are close relatives in the absence of flow back of money **Renu Tandon v. UOI 1993 (66) E.L.T. 375 (Raj)**
- (d) One to partnership firm and other to limited Company, where relatives of some partners of the firm are directors in the limited Company.
- (e) one belongs to HUF and other to firm where Karta of HUF is a partner –Shakti Engg Works v. CCE - 1989 (40) ELT 95 (CEGAT).
- (f) Two belong to limited companies with some common directors - Cosmos (India) Rubber Works (P.) Ltd. v. UOI - 1988 (36) ELT 102 (Bom HC) * ITEC (P.) Ltd. v. CCE - 1992 (57) ELT 639 (CEGAT)
- (g) When two units are functioning in the same Commissionerate and have been granted separate registrations and facility of job work turnover not clubbable. Nikhildeep Cables P. Ltd. v. CCE 1994 (70) E.L.T. 273 (T)
- (h) Units separately incorporated with separate plant not clubbable because of few common directors or grant of interest free loans Alpha Toyo Ltd. v. CCE 1994 (71) E.L.T. 689 (T)
- (i) Two companies with related directors and common product Padma Packages P Ltd. v. CCE No Clubbing
- (j) Manufacture of same products in factory as well as job workers factory not clubbable unless common control shown. CCE v. MM Khambatwala 1996 (84) E.L.T. 161 (SC)
- (k) SSI units – Registration of SSI units under Director of Industries – Clubbing of units/undertakings for computing investment in plant and machinery of common partners/Directors is not applicable in case of clubbing of SSI under Excise **Kemtrode Pvt. Ltd. v. Joint Director (SSI), Govt. of Karnataka 1999 (108) E.L.T. 616 (Kar.)**

SSI can avail exemption for part of Invoice

If one invoice may contain part of goods under one slab (exempted slab) and other part in taxable slab. In such case, only the excess value will be leviable at applicable rate. - **Sri Venkateswara Textile Engg Ltd. v. CCE - (1996) (CEGAT).**

SSI and Brand Name

In the instant following cases associated with brand name SSI Benefit available

- (a) Such ancillary units used to mark their goods with the name of the large unit and refer to a code number or product number. The Madras High Court in BHEL Ancillary Association v. CCE 1990 (49) E.L.T. 33 had held that this code number or product number would not constitute a brand name.
- (b) When the goods bear a brand name of Khadi and Village Industries Commission or a State Khadi and Village Industry Board or National Small Industries Corporation or a State Small Industries Development Corporation or a State Small Industrial Corporation. .
- (c) The Supreme Court has held in Astra Pharmaceuticals P Ltd. v. CCE 1995 (75) E.L.T. 214 that in respect of medicinal preparations the mark made by the manufacturers would be called a “house mark” and would not be the brand name. Therefore, the monograph which identifies a manufacturer's name would not be a brand name.

(d) **In the case of CCE v. ESBI Transmission Private Ltd. 1997 (91) E.L.T. 292**, the Division Bench of the Calcutta High Court held that if the brand name belonged to the foreign company but the Indian company was given the exclusive right to use the same being the owner through assignment, then the benefits of the notification cannot be denied. The Tribunal decisions have also held that assignment of brand name is valid for availing the benefit of SSI exemption in the following cases:

(i) **Opus India v. CCE 1992 (62) E.L.T. 447 (T)**

(ii) **Vikshara Trading and Investment P.Ltd. v. CCE 1996 (87) E.L.T. 499 (T)**

(iii) **CCE v. Bigen Industries 1999 (107) E.L.T. 213 (T)**

(e) In **Namtech Systems Ltd. v. CCE 2000 (115) E.L.T. 238**, the Larger Bench of the Tribunal held that when the goods are affixed with the brand name or trade name of a foreign person whether manufacturer or trader, the benefit of the exemption notification cannot be taken. It must however be noted that this decision will not apply to cases where the brand name is assigned as the Calcutta High Court decision in (d) above holds good. Exemption Based on Value of Clearances (SSI)

(f) Raw materials received by manufacturers which may bear a brand name are entitled to benefit of Notification, see **CBEC Circular 509/5/2000-CX.**, dated 18-1-2000, (115) E.L.T. T 58 extracting Supreme Court order.

(g) When the goods bear the brand name of any person, if such goods are manufactured in a rural area. Rural area means the area comprised in a village as defined in the land revenue records, excluding –

(i) the area under any Municipal Committee, Municipal Corporation, Town Area Committee, Cantonment Board or Notified Area Committee

(ii) any area that may be notified as an urban area by the Central Government or a State Government.

(h) The Larger Bench of the Tribunal in **Intertec v. CCE 2001 (127) E.L.T. 609 (T-LB)** has held that if the goods manufactured by the SSI unit fall outside paragraph 1 consequent to their being branded goods, payment of duty on such branded goods will not disentitle the other products from getting the benefits of the Notification.

Using the name of the company is trade name similar to brand name SSI benefit not available

A Company manufacturing the cement on the bags of cement they used words “Manufactured by Dharani Cements Ltd. A Subsidiary of Grasim Industries Ltd.” Dharani Ltd were using a trade name of some other company with the purpose of indicating a connection in the course of trade between the product and that person. Thus, they are therefore clearly **not entitled to the benefit of the Notification.** **GRASIM INDUSTRIES LTD. 2005 -S.C.**

Goods bearing foreign brand name not eligible - Use of foreign brand name would dis- entitle the manufacturer of the SSI concession - **India Reprographic Systems (P.) Ltd. v. CCE 1995 CEGAT** – Similar view was also held in **Sonoma Aromatics (P.) Ltd. v. CCE 1995**

(78) ELT 285 (CEGAT) /- Namtech Systems Ltd. v. CCE 2000(115) ELT 238 = 36 RLT 35 (CEGAT).

SSI exemption is not available if brand name belongs to sister concern/other company in same group/same management, common partners/directors SSI exemption is not available if logo/symbol of Group Company is used - Katari Refractories v. CCE 1999(110) ELT 767 (CEGAT)/ CCE v. Ajay Footwear 2001(129) ELT 704 (CEGAT).

Assignee of brand name is eligible for SSI concession

In P&B Pharmaceuticals v. CCE 2003 AIR SCW 2949 = 153 ELT 14 (SC), it was held that once a logo is assigned, the assignee is entitled to SSI exemption, even if third party or assignor is also using the logo. There is no obligation on owner of a logo to make a roving enquiry to ascertain whether any other person is using his logo and then disclose it to department to avert a possible allegation of suppression of facts material. However, it does not become brand name of final product and in such case; SSI unit is entitled for SSI concession.

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Case Laws On Customs

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