

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Tax Appeal No.45 of 2018**

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Commissioner of GST & Central Excise, Jamshedpur,  
having its Office at Outer Circle Road, Bishtupur, P.O. &  
P.S. Bishtupur, Town Jamshedpur, District : East  
Singhbhum. ... .. **Appellant**

Versus

M/S Mica Mold through its proprietor; Arun Agarwal,  
having its Office at Sundar Nagar, P.O. & P.S. Sundar  
Nagar, Town: Jamshedpur, District : East Singhbhum.

... .. **Respondent**

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**CORAM: HON'BLE THE ACTING CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE ARUN KUMAR RAI**

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For the Appellant : Mr. Amit Kumar, Advocate  
For the Respondent : Mr. Sumeet Gadodia, Advocate  
: Ms. Shruti Shekhar, Advocate  
: Mr. Nillohit Choubey, Advocate  
: Mr. Ranjeet Kushwaha, Advocate

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**Order No. 10/Dated 4<sup>th</sup> September, 2024**

**Per Sujit Narayan Prasad, A.C.J.**

**Prayer**

1. The instant appeal is under Section 35 G(1) of the Central Excise Act, 1944 directed against the order dated 22.08.2017 passed by the learned Customs, Excise & Service Tax Appellate Tribunal, Kolkata in Excise appeal Nos. 648-654 of 2011 whereby and whereunder the issue with respect to the value of clearance of MM and MMPL are to be clubbed for determining the Central Excise duty as payable by MMPL, in favour of the assessee.

## **Factual Matrix**

**2.** The brief facts of the case, as has been taken note by the original authority as also the learned Tribunal, reads as under:-

It is the case of the petitioner-Revenue that on specific intelligence that M/s Mica Mold, Sundarnagar, Jamshedpur (hereinafter referred to as MM) in collusion with M/s Mica Mold (p) Ltd., Sundarnagar, Jamshedpur (hereinafter referred to as MMPL) are indulged in evasion of duty by misusing small scale Exemption Notification No.08/2003-CE as amended as well as clandestine removal of the goods, factory as well as office premises of MM/MMPL, their office premises, residential premises of proprietor of MM/Director of MMPL and residential premises of staff of MM were searched at a time. During search some incriminating documents were recovered. The Indian currency worth Rs. 1.31 crore were also recovered from the office premises of MM & MMPL and the same were detained. Similarly during search operation at residential premises of one of the staff of MM, Indian currency note worth Rs.3.0 crore were recovered and detained. Subsequently, out of detained Indian currency notes, currency notes of Rs. 1,22,56,966/- were seized under Section 110 of the Customs Act read with Section 12 of the Central Excise Act, 1944.

**3.** It is the further case of the Revenue that on scrutiny of seized documents, it was found 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 has removed goods from its own premises as well as from the factory of MMPL with intent to evade central excise duty. Thus MM during the period from 2003-04 up to 07.11.2007 by suppression of materials facts in collusion with MMPL evades Central Excise duty.

**4.** The further case is that MMPL has been created by Shri Arun Agarawal, proprietor of MM, subsequently and both the factories MM and MMPL belong to him and his Hindu Undivided Family. Shri Arun Agrawal has been managing and controlling business activity of both MM and MMPL. The documents show that orders were placed on MM, but goods were supplied by MMPL and also payments were received by MMPL. This not only confirms financial complexity and mutuality of financial interest, but also confirms financial flow back from MM to MMPL. There are also evidences that though purchase orders, initially placed on MM, were got amended in the name of MMPL who

supplied the goods, payments were received by MM and MMPL as also financial flow back from MMPL to MM.

**5.** It is the further case of the Revenue that MM has been sharing profit with MMPL in as much as Shri Arun Agrawal as proprietor of M/s Mica Mold has forgone some business interest in favour of M/s Mica Mold Pvt Ltd. Such sharing of profit is not found among commercially independent firms and the same is visualized only when mutuality of financial interest existed between M/s Mica Mold and M/s Mica Mold Pvt. Ltd and the plea of Shri Arun Agrawal in certain instances that though purchase orders were issued to MM, the bills were raised, by mistake, by MMPL. This duly confirms that a common system of billing by common set of staff was in vogue both for MM and MMPL because had it been otherwise such mistake in billing would have never occurred.

**6.** Shri Arun Agrawal has written to their buyers that they are also to inform to them that kindly amend the purchase order in the name of M/s Mica Mold, because their company became Pvt. Ltd. now. This means M/s Mica Mold Pvt. Ltd. also belongs to him only and he wants to transfer the orders from his first firm M/s Mica Mold to second firm M/s Mica Mold Pvt. Ltd in order to split the value of clearances into two firms.

**7.** Based on the aforesaid investigation and the documents available on records and the statement recorded u/s 14 of the CEA, a show-Cause Notice was issued to the Respondent Assessee by the Department.

**8.** The case was decided against the Assessee and the adjudicating authority Vide O-I-O No.06-09/Commissioner/2011 dated 31.03.2011 / 13.04.2011 confirmed the amount of Rs.1,42,35,345/-, Rs.40,39,548/-, Rs.12,22,888/- and Rs.6,84,451/- along with interest and penalty.

**9.** Being aggrieved by the aforesaid O-I-O dated 31.03.2011/13.04.2011, the Assessee/Respondent filed an Appeal before the learned CESTAT, Kolkata which was registered as Excise Appeal No. 648-654 of 2011.

**10.** The learned CESTAT, Kolkata vide Order dated 22.08.17 remanded the matter after setting aside the Penalty.

**11.** Against the aforesaid order of CESTAT, the present appeal has been filed.

**12.** It is evident from the factual aspect that the original authority altogether has formulated six issues i.e., -

(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? And
- (6) Whether they are liable for penalty as proposed in the notices?

**13.** The issues have been decided by passing following orders :-

“ORDER

Having regards to the facts and circumstances of the cases, I pass following orders:-

(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 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.

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/- only.

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

**14.** The assessee, being aggrieved with the aforesaid order, has preferred appeal before the Tribunal being Excise Appeal No.648-654 of 2011.

**15.** The Issue Nos. 1, 2, 3 and 4 have been decided in favour of the assessee whereas the Issue No.5 has been remanded for fresh adjudication.

**16.** The Revenue, being aggrieved with the order passed by the learned Tribunal with respect to the issue having been decided in favour of the assessee so far as it relates to Issue No.1, i.e., whether value of clearances of MM and MMPL are to be clubbed for determining Central Excise duty payable as MMPL, has preferred the present appeal.

**Submission made on behalf of the appellant-Revenue**

**17.** Mr. Amit Kumar, learned counsel appearing for the appellant, has submitted by referring to the consideration made by the Assessing Officer which has been taken note



and considered at Para 10.1.2 of the aforesaid order as appended as Annexure-3 dated 31.03.2011.

**18.** It has been contended that the specific case of the Revenue before the Assessing Officer was that both the units have been recognized by the customer, i.e., Indian Railways (Eastern Railway and Southern Railways) as one and the same vendor, being code 68457. They are operating from one and same office. The search had been conducted and in course thereof, most documents of MM were found in the declared office of MMPL. Stock register of both MM and MMPL were found common. The stock register of all types of brush holder, seized from MMPL factory premises have been found either supplied by MM or MMPL to Railways. But no satisfactory reply has been furnished while responding to the said show cause notice. The Revenue, in view of the aforesaid circumstances, has found that the Stock Register for Brush Holder (finished goods for both MM & MMPL) shows supplies to and from MM, and has been maintained in a common manner with both showing purchase of raw materials and manufacture of finished goods for each other.

**19.** The consideration has also been given about the evidence of common procurement of raw material, common storage, common manufacturing and common accounting

of goods, which establishes mutuality of interest between the two units.

**20.** It has been contended by referring to the finding so recorded at paragraph 7 by the learned Tribunal wherein without taking into consideration the consideration made by the original authority in its order, as referred in paragraph 10.1.2, merely by making reference of the finding to the effect that both the business entities are different having distinct and separate entity being the Proprietary concern and Private Limited Company.

**21.** The reference has also been made that the assessment of turnover for Income Tax purposes was being made separately and their factory premises are also differently located. The Tribunal has come to the conclusion that only because the Directors of the Private Limited Company are the sons of the Proprietor of the firm, does not mean that they are the same business entities, especially when in the subsequent assessment year the Department has accepted these facts.

**22.** The ground, therefore, has been raised that without taking into consideration the fact finding arrived at by the original authority on appreciation of the relevant documents, coming to the conclusion by assigning the reason that Directors of the Private Limited Company are

the sons of the Proprietor of the firm, does not mean that they are the same business entities.

**23.** It has been contended that it is not only that Directors of the Private Limited Company are the sons of the Proprietor of the firm, rather, even the fact about the mutuality of interest between the two units has been found to be established on consideration of the relevant documents by the original authority wherein the consideration has been given with respect to the selling of the goods to the same customer as was found to be there from the documents placed as Annexure-1.

**24.** Further, MM and MMPL are recognized by the their customer i.e., Indian Railways as one and same vendor being Code 68457 as also they are operating from one and the same office.

**25.** Even in course of search, most documents of MM were found in the declared office of MMPL. The stock register of both MM and MMPL were found common.

**26.** The learned counsel appearing for the Revenue, based upon the said factual aspect, has submitted that the stock register other documents were found in the declared office of MMPL factory premises and finding so recorded that merely because office is common and Directors of the Private Limited Company are the sons of the Proprietor of the firm are not only two reasons as has been found to be

available by the Assessing Officer, rather, in addition to the aforesaid two reasons other reasons have also been there which led the Assessing Officer to answer the Issue No.1 in favour of the Revenue.

**27.** The learned counsel, based upon the aforesaid ground, has submitted that the impugned order, so far as consideration of Issue No.1 is concerned, needs to be interfered with.

**Submission made on behalf of the Respondent**

**28.** Per contra, Mr. Sumeet Gadodia, learned counsel appearing for the respondent-assessee, has submitted by referring to paragraphs 9 and 13 of the counter affidavit wherein the grounds have been taken that both the units are two independent entities having separate legal existence in law and in fact. The MM is a proprietorship concern, in existence since the year 1975 while the MMPL is a limited company incorporated in 2004.

**29.** The ground has also been taken that the appellant has not adduced a single evidence to substantiate their claim in order to establish the fact that both the units are not independent.

**30.** Learned counsel for the respondent has taken the ground that thereby the appellant is not in a position to prove about the fact of perversity for showing interference in the impugned order.

**31.** The learned counsel, based upon the aforesaid ground, has submitted that the finding as has been recorded by the learned Tribunal based upon the aforesaid consideration as under paragraph-7 of the impugned order passed by the learned Tribunal, therefore, suffers from no error.

**Consideration**

**32.** Heard learned counsel for the parties, gone across the pleading as also the finding recorded by the original authority as well as the appellate forum.

**33.** It is evident from the factual aspect, which is not in dispute, that altogether six issues were there but this appeal has been preferred with respect to the Issue No.1 which has been decided against the assessee and which, on challenge, has been reversed by the appellate forum, the Tribunal.

**34.** The learned counsel appearing for the Revenue has emphatically argued by referring the consideration made by the Assessing Officer as has been taken note in paragraph 10.1.2 of the order passed by the original authority. This Court, in order to appreciate the same, needs to refer herein the finding so recorded at paragraph 10.1.2 passed by the original authority, which reads hereunder as:-

“10.1.2 The two units manufacture similar goods, selling to the same customer, i.e. Indian Railways. As revealed from documents placed as Annexure-1 of

this Order, both MM & MMPL are recognized by their customer i.e Indian Railways (Eastern Railway & Southern Railways) as one and same vendor, being code 68457. They are operating from one and same office. In course of search, most documents of MM were found in the declared office of MMPL. Stock register of both MM and MMPL were found common. The stock register of all types of brush holder, seized from MMPL factory premises (Annexure-8 to the SCN), show in the remarks column the name of the company for which the entry related. Sri Arun Agrawal in his answer to Q. 27 stated that it showed that the goods were either supplied by MM or MMPL to Railways. When asked to show as to under what documents goods from MM were received by MMPL, he could not reply. Thus the stock register for brush holder (finished goods for both MM & MMPL) shows supplies to and from MM, and has been maintained in a common manner with both showing purchase of raw materials and manufacture of finished goods for each other. Similarly Annexure-9 to the show cause notice showing receipt and issuance of store items were maintained commonly for both MM & MMPL. This is a clear evidence of common procurement of raw material, common storage, common manufacturing and common accounting of goods, which shows mutuality of interest between the two units.”

**35.** The reason for referring the said finding is in order to assess as to whether the original authority has taken into consideration the relevant documents while coming to the conclusion regarding the issue of mutuality on interest in between the two units.

**36.** It is evident from the consideration so made by the original authority as referred in paragraph 10.1.2 wherein

both the authorities have taken into consideration the various documents, i.e., Stock Register, most documents of MM were found in the declared office of MMPL and Stock Register of both MM & MMPL were found common.

**37.** The testimony of one Sri Arun Agrawal has also been taken note wherein he has stated that the goods were either supplied by MM or MMPL to Railways. In another query to show as to under what documents goods from MM were received by MMPL, he could not reply.

**38.** The original authority, based upon the aforesaid consideration of oral testimony and documentary evidence, has come to the conclusion regarding the mutuality of interest between the two units. The same has been appealed before the Tribunal.

**39.** The learned Tribunal has reversed the said finding by taking into consideration the fact that both the business entities are different having distinct and separate entity being Proprietary concern and Private Limited Company as also only because the Directors of the Private Limited Company are the sons of the Proprietor of the firm does not mean that they are the same business entities. Therefore, the learned Tribunal, while considering the aforesaid issue, has only gone into the issue of entities which led the learned Tribunal to come to the conclusion that since both the units are having distinct and separate entity being the

Proprietary concern and Private Limited Company and, therefore, the finding which has been recorded by the original authority cannot be said to be just and proper.

**40.** But, this Court is of the view that when the consideration has been given by the original authority by taking into consideration the various documents, i.e., Stock Register for Brush Holder etc. and hence, it was incumbent upon the appellate authority to re-appreciate the said documents for the purpose of coming to the conclusion and not only by going through the identity of both the firms, i.e., one being the Proprietary concern and another a Private Limited Company.

**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.

**42.** The issue has been raised that the appellant has not raised the issue of perversity. Even accepting that the issue of perversity has not been raised but if the error is apparent on the face of the order, then the Court while considering the propriety of the order which has been challenged is to consider on the basis of the principle as to whether the order assailed suffers from perversity or not.



**43.** 'Perversity' means that if anything has not been considered if so placed or erroneously been considered and if that be so, it is incumbent upon the Court to law to go into the propriety of the order by taking into consideration the issue of perversity.

**44.** The word 'perversity' has been defined by Hon'ble Apex Court in the case of ***Arulvelu and Another v. State represented by the Public Prosecutor and Another*** [(2009) 10 SCC 206] at paragraph 27, which is quoted hereunder:-

"27. The expression "perverse" has been defined by various dictionaries in the following manner: 1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn. "Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable." 2. Longman Dictionary of Contemporary English, International Edn. Perverse.—Deliberately departing from what is normal and reasonable. 3. The New Oxford Dictionary of English, 1998 Edn. Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law. 4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.) Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant. 5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn. "Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

**45.** Further, the meaning of "perverse" has been examined in ***H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and Others v. M/s***

***Gopi Nath & Sons and Others [1992 Supp (2) SCC 312]***

wherein, at paragraph 7, the Hon“ble Apex Court has observed as under :-

“7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court to reappraise the primary or perceptible facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness—as distinguished from the legal permissibility—of the primary or perceptible facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

**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.

**50.** Accordingly, the instant appeal stands disposed of.

**51.** Since the issue is of the year 2017-18 and, as such, the appellate authority is directed to decide the appeal preferably within a period of six months from the date of receipt of copy of the order.

**(Sujit Narayan Prasad, A.C.J.)**

**(Arun Kumar Rai, J.)**

Birendra/**N.A.F.R.**