

**Cce Vs. Gilt Pack Ltd. and ors.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-01-2005

**Reported in :** (2005)(101)ECC337

**Judge :** S Kang, Vice, M T K.C.

**Appellant :** Cce

**Respondent :** Gilt Pack Ltd. and ors.

**Judgement :**

1. These 27 appeals have been filed by the Revenue against the order of Commissioner under which he dropped action initiated against the various respondents.

2. The facts in brief are that on the basis of intelligence that M/s.

Gilt Pack Ltd. are utilising certain existing companies/units as dummy units for evading central excise duty on the goods manufactured by them, the preventive officers paid a surprise visit on 16.5.96 to the factory and office premises of M/s. Gilt Pack Ltd. Shri Rajinish Sharma, authorised signatory of M/s. Gilt Pack Ltd. was present at that time. It was noticed by the officers that two units, M/s. Gift Pack Ltd., Unit No. 1 and M/s. Gift Pack Ltd., Unit No. 2 are situated adjacent to each other and within the same premises and they were registered for manufacture of HDPE/LDPE/PP Sacks and bags, out of the tapes and fabrics of HDPE/LDPE and PP granules. On conducting physical stock verification of the

finished goods in Unit No. 1, the officers found excess stock of HDPE Laminated fabrics of 5.87 MTs and in Unit No. 2, shortage of 4.00 MTs of HDPE Laminated fabrics than the balance recorded in the statutory records. The officers seized the excess stock of HDPE Laminated fabrics. The officers also seized certain records of other units viz. M/s. Adi Properties (P) Ltd., M/s. Alpine Properties (P) Ltd., M/s. Anshuman Properties (P) Ltd., M/s. Dham Properties (P) Ltd. and M/s. Jacquart Properties (P) Ltd. lying in office premises of M/s. Gilt Pack Ltd. The officers thereafter visited the 22 units said to be used by Respondent No. 1 for evasion of duty. On physical verification of these units, the officers noticed that these were only small rooms/sheds of dimension ranging from 10' x 20' ft. to 20' x 40' ft. and were separated from each other by cement walls but none of the units were having manufacturing activity nor there was any machinery.

All the sheds were found with full of dust and cobwebs with no sign of any manufacturing activity. From visual examination of the sheds, it was found that these have not been used for a long time. On being asked for records, Shri Rajinish Sharma in his statement dated 16.5.95 clarified that since there has been no transaction in these units, therefore, records were not kept in individual unit premises but kept in the office of Gilt Pack Ltd. 3. On investigation, prima facie, it was found that M/s. Gilt Pack Ltd. (which is a Public Limited Company) distributed their production in 22 units (Respondent No. 3 to 24). These 22 units were showing procurement of HDPE/LDPE granules from M/s. Reliance & IPCL and conversion of granules to tapes, and then to laminated and unlaminated fabrics from Respondent No. 1 on job work basis. They were said to have stitched the bags and availed the benefit of SSI exemption. At the time of visit/search on 16.5.96 and 17.5.96, no machines were found in these units. In most of the units authorised persons, declared to the department, were not available and many of them were working for M/s.

Kalani Industries Ltd. All the units were closed without having any stock of raw materials or finished goods. The Directors of 20 units, who complied with the summons during investigation stated to have received only sitting fee for attending meeting. All the 22 units have borrowed money under head "un-secured" loans shown in balance sheets either from M/s. Kalani Industries Ltd. and individual

Kalani family members or family Trust run by Kalani family or members thereof. All the loans are unsecured in nature and they have been given by either the family members of Kalani Family or other group companies or family Trusts run by Kalani family. All these companies/units have been created by the Kalani family and they have full control and supervision over the activities of all these units. A major chunk of the holdings of shares/bonds of the Respondent No. 2 have been held by the individual family members of Kalani Family, employees of Kalani Industries/Gilt Pack Ltd., Kalani Family Trust and associate corporate bodies. The constitution of the firm, share holding patterns, day-to-day management of units by the employees of the Respondent No. 1 revealed that Respondent No. 1 controlled these units. These 22 units were showing sale of their goods (HDPE Sacks) to Respondent No. 1. This was done to show the production of Respondent No. 1 in their names by availing SSI exemption. The Respondent No. 1 was taking advantage of non-payment of duty for the quantity of sacks, shown as manufactured by the Respondents No. 3 to 24. Six show cause notices issued to the appellants demanding duty, interest and imposing penalty were dropped by Commissioner under the impugned order.

4. Shri Vikas Kumar, Ld. SDR appearing for the Revenue challenged the findings of the Commissioner on following grounds: (1) on 16.5.96, no machines were found in 20 units (Respondents No. 3 to 22). The machines were cleared to have been sent for repairs to places like Mumbai and Ahmedabad. Repairing invoices which were produced during adjudication were for very small repairs and it was claimed that labour personally came and took away the machines in their own vehicle. The machines claimed to have been sent for repairs were in fact shown sent in June-July, 1996 whereas the visit of the officers was in May 1996 and minor payment has been shown for repair through demand/drafts, all dated 8.8.96.

(2) None of the units having their individual power service connection for use of electricity from MPEB. The Respondent No. 3 to 22 have claimed that power charges are included in the rent collected by the lessors as per agreement. The area of these premises was in the 300 to 800 sq. ft and rent was ranging from Rs. 150 to Rs. 450 for a month, which included electricity charges, which appears to be imposable. When huge production of Sacks is shown (e.g. M/s. Saka

Trading manufactured 388500 Sacks in November 1992 and rent including electricity is said to be Rs. 150). He pleaded that the lessor has no authority to share power with other units under M.P. Electricity Rules. The production records of the respondent units have shown heavy production and power consumption cannot be a small amount.

(3) The intimation letter sent by the Respondents No. 3 to 24 for closure of the unit was said to have been sent under certificate of posting. The adjudicating authority observed that intimation letter addressed to Superintendent Range, Pitmaur was also endorsed to the Asstt. Commissioner, Indore and these were said to have been submitted in April 1996. The Commissioner failed to appreciate that records were verified earlier also. The Superintendent vide letter dated 7.10.96 intimated that there had been no intimation of closure with RT-12 returns of the March 1996 or under certificate of posting.

(4) All the 22 units were not having any stock of raw material, finished goods or waste or per RG-I Register or although there should have been .02 Mt waste and scrap in the factory of Saka Trading as per RG-1 but it was not available. The Commissioner observed that it is not an allegation in the show cause notice. It was pleaded by the Revenue that the respondents took post visit steps to accounts for the waste by showing sale with being accounted for in RG-1 register.

(5) All the 22 units have borrowed money under the Head 'unsecured loans' either from Appellant No. 2 or family members or family trust of Kalani Family showing that these units have been created by one family having control and supervision on its profit. The shares of these Private Limited Cos. are in the hands of Kalani family only.

Respondent No. 1 have got interest in providing all facilities to all the small scale units as Mr. Kalani is Managing Director of the Noticee No. 1 and Kalani family, the promoters of Noticee No. 1. The Commissioner failed to appreciate the facts that constitution of firm, the share holding pattern, the loan arrangement among units, the man power used by Respondent No. 1 for day-to-day management of these units were factors, which were supported by sufficient evidences. The Commissioner committed error in not holding that Noticee No. 1 was promoted by

the Kalani group and holding more than 30% shares and also the management control. The production of sacks by 22 units was meant to supplement the needs of Respondent No. 1 by clearing the goods without payment of duty in the garb of SSI exemption.

He, therefore, pleaded that in view of the above, the impugned order may be set aside and the appeals may be allowed. He also relied on the following decisions: CCE, New Delhi v. Modi Alkalies & Chemicals Ltd. and Ors. 2004 (95) ECC 617 (SC) "Where it was held where 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 generalisation or rule of universal application. Two basic features which prima facie show inter-dependence are pervasive financial control and management control. Sanjay Steel Co. v. CCE, Ahmedabad, Where it was held that three units got activated only for a short period of one month or so. The main activity of three units was trading activity in steel products, units had no permanent machinery. Machinery was taken on hire only for manufacture of lavender beauty talcum powder, the said arrangement having been made through consultancy agency connected with Lakme Ltd. When officers visited the premises, there was no plant, no machinery, no raw material or finished product which could indicate that three units were engaged in the normal course in the manufacture of talcum powder. Units dummies of Lakme Ltd. (Para-9) Northern India Rubber Mills v. CCE, Chandigarh, 2000 (175) ELT 506 "Where it was held that only a few operations being conducted in one factory and remaining operations in other factory. Units not producing goods independent or each other. Value of clearances of three units to be clubbed." Steel Weld (India) v. CCE, Calcutta-II, 2003 (87) ECC 135 (T-Kolkata) : 2003 (153) ELT 345 (T-Kolkata) "Where it was held that, common expenses incurred on behalf of the two units, common staff and one attendance Register and one accountant looking after the accounts of both the units without making any differentiation in the accounts. Sufficient evidence on record to show that the second units was created with the sole intention to divert the clearances towards the said unit.

(5) Kores (India) Ltd. v. CCE, Indore, 2003 (161) ELT 1116 (T.-Delhi) "Where it was held that employees of the proprietor of the main units shown as Directors,

commercial matters of the four units attended by Appellant No. 1, common infrastructure, common procurement of raw materials, centralised payment to employees, administrative and financial control over the four units in the hands of Appellant No. 1, and other financial arrangements between the units clearly establish financial inter-dependence and therefore, the value of clearances of all units required to be clubbed for determining the eligibility of the rain unit to SSI Notifications benefit.

He also stated that for stitching the jute bags, machine having 1/2 HP power with 1 or 3 phase is required.

5. Shri L.P. Ashthana, Ld. Advocate appearing for the respondents pleaded that M/s. Guilt Pack Ltd., is a Public Limited Company with 1.41% share holding of Kalani family as on 16.7.96. Out of 11 Directors of the Guilt Pack Ltd., only P.S. Kalani and Saurabh Kalani are the Directors of Kalani Family and the rest are professional directors. The other 22 Respondents No. 3 to 24 are Private Limited Companies and many of these companies came into existence even prior to coming of existence of Guilt Pack Ltd. He submitted a chart as Exhibit-D giving the data of incorporation of the various companies and pleaded that they were having L-4 licence as well as L-6 licence which were issued to them during 1987 to 1991. He pleaded that these companies were working since the date of their taking L-4 licence. All these units were maintaining their RG-1 registers. 20 units working in the sheds provided by Kalani Industries on rent and these unit were working there and regularly maintaining RG-1 registers and submitting RT-12 Returns.

The panchnama shows that records of the these units were recovered from the respective units and not as shown in the statement of Shri Rajinish Sharma taken on 16.5.96 where it is mentioned that these were recovered from the office of Respondent No. 1. He stated that the sheds where the 20 units were working required repair, therefore, all the machines and records were shifted from these units to the other places. The intimation for closure of the unit was also sent alongwith RT-12 returns for the period ending 31.3.96 under certificate of posting. The show cause notice does not allege that there was financial flowback or profit sharing between the Respondent No. 1 and Respondents No. 3 to 24. Mr. Mahesh

Kumar Janane, in his statement has clearly brought out that M/s. Alpine Properties Pvt. Ltd. was incorporated in 1982 whereas M/s. Guilt Pack was incorporated on 28.8.1984. There are common Directors, employees, common labours between M/s. Guilt Pack Ltd. and Respondent No. 3. He referred to the findings of the Commissioner and referred to para-54.1 to 54.6, 55.1 to 55.8 wherein the Commissioner has given the detailed finding that as regards non-functional status of SSI units, which is primary evidence from the observation on 16.5.96 and 17.5.96, Noticees No. 3 to 22 (SSI units) during investigation, statements recorded at the time of visit of central excise officers and in reply to the show cause notice had submitted that their factory premises located in the sheds have been acquired on rental basis from Kalani Industries Ltd. (Noticee No. 2) under the valid legal lease agreements. The conditions of the sheds was very bad which is evident from the photographs. They wanted the lessor to repair their sheds to which the lessor has agreed. Therefore, all the units situated in such sheds had to vacate the premises simultaneously. Therefore, the raw materials lying with the units were consumed and finished goods were cleared after payment of duty. At the same time, stitching machines, which are the only machinery required for their activity of production of HDPE Bags, were also moved to their Head Office at Indore from where these were sent for repairs. They had sent intimation of closure to the department. The Commissioner came to the conclusion that it is evident that these letters were submitted to the department in April 1996 itself prior to the visit of the officers. Noticee have also produced copy of the letter dated 19.11.96 of the Superintendent of Central Excise, Range-II, Pitampur which confirmed receipt of intimation letter about closure of the units (temporary or permanent) alongwith RT-12 Returns for the quarter ending March 1996 itself). These respondents 3 to 22 have strongly agitated on the allegation that no manufacturing activities were ever carried out in their SSI units. They explained that they do not have separate electric power connection from MPEB because this facility is provided by their lessor and power charges are included in the lease rent of the shed. This power consumption is for stitching which is very low equivalent to bulb of 40 watts. M/s. Kalani Industries have given similar sheds to other transport company on similar rent including power charges. The department has also made some queries from repairers. The departmental officers in connection with their official duties had

been visiting their units. This includes preventive checks, annual stock taking, budget day stock verification, audit purposes, export of consignment from factory premises. These had been carried out by the department over a period of time. During these visits, the officers verified stocks vis-a-vis records maintained by these SSI units and it was not an observation that no manufacturing activity was carried out. These small scale units were procuring HDPE fabrics from various manufacturers without payment of duty by following Chapter X procedure up to June 1992. The D-3 intimation about receipt of goods under Chapter X were filed from time to time and each and every such consignments were verified by the officers and same were warehoused at the respective premises of these SSI units. This itself proved that genuine manufacturing activity were being carried out. Head Office Preventive had raided these units on 16.7.92 and subsequently inquiries were initiated in 1995. But department had not found them as non-existent dummy units. They had been purchasing raw material i.e.

plastic granules from the main producers or their agents and sending them to job work for processing it into circular fabric as per the provisions of rules. This was done with the due permission of the department. Various job workers to whom plastic granules were sent for manufacture of goods on job work basis are situated in Gujarat, Maharashtra, Daman, etc. besides getting it done from M/s. Guilt Pack Ltd. A perusal of the constitution of SSI units shows that companies were established quite earlier before they engaged in manufacturing activity. These companies were engaged in the various activities viz.

trading, etc. Their capital was created through contribution of their shareholders for carrying out their activities. Guilt Pack Ltd. is not having and share holding of the respondents from Sl. 2 to 24. If they have borrowed some money from members of Kalani family, it could not be said that companies are being controlled by family or persons from whom money is borrowed. All the respondents are companies incorporated under the Companies Act and are separate legal entities.

6. The department had full knowledge of operation of these units. They were receiving the granules and sending these for manufacture of HDPE fabrics to respondents No. 1 under Rule 57F(2), 57F(3) and receiving the fabrics which was

being converted by them into bags. 50% of their production was being sold through Guilt Pack Ltd. and 50% was sold through other persons. There was no profit sharing between them and Guilt Pack Ltd. The entire case of the department is based on presumption and assumption. These units were also audited by MPAG Audit Team besides departmental auditors. Therefore, there is no question of clubbing the clearances of Respondents No. 3 to 24 with the clearances of Respondent No. 1. Area Controls Pvt. Ltd. v. CCE, 2004 (91) ECC 314 (SC): 2003 (158) ELT 272 (SC) Supreme Washers (P) Ltd. v. CCE, Pune, 2003 (85) ECC 9 (SC): 2003 (151) ELT 14 (SC) Alembic Glass Industries Ltd. v. CCE, 2002 (83) ECC 288 (SC): 2002 (143) ELT 244 (SC) CCE, New Delhi v. Modi Alkalies & Chemicals Ltd., 2004 (95) ECC 617 (SC): 2004 (171) ELT 155 We find that the case of the department is that M/s. Guilt Pack Ltd. is manufacturing HDPE/LDPE/PP Bags. In order to avail concessional rate of duty on bags manufactured by them, they created dummy units - Respondents No. 3 to 24 for showing that part of bags cleared by them were manufactured by the Respondents No. 3 to 24 and were cleared by Respondents No. 3 to 24 under SSI exemption. We find that the claim of the department is that units No. 3 to 24 are taking financial loans from each other or from Kalani family or Kalani Family Trust or from Kalani Industry and thus, there is financial control over these units by the Respondent No. 1 i.e. M/s. Guilt Pack Ltd. We find that no evidence was produced before us that M/s. Guilt Pack Ltd. are having financial control on Respondents No. 3 to 24. No financial control of M/s Guilt Pack Ltd. over respondents No. 3 to 24 is established.

Therefore, we cannot hold that there is any financial control of Respondent No. 1 on these 22 SSI units i.e. Noticees No. 3 to 24. All the respondents (Sl. No. 3 to 24) are private limited companies whereas Respondent No. 1 is a public limited company. 13 units out of the respondents No. 3 to 24 were in existence before Guilt Pack Ltd. came into existence. Therefore, it cannot be said that these private limited companies were created by M/s. Guilt Pack Ltd., who availed the benefit of exemption of SSI units for clearance of HDPE bags.

8. We also find that the department's case is build on the ground that on the date of visit i.e. on 16.5.96, there was no stock, of finished goods or raw materials in the

factory of Respondents No. 3 to 22 and there was no machinery available. We find that respondents have explained that three sheds under which these respondents No. 3 to 22 were working, required repair and, therefore, the sheds were vacated by respondents No. 3 to 22 alongwith their machines and kept vacant for repairs. We find that this position has also not been disputed by the Revenue. The only dispute of the Revenue is that there was no electric connection in the name of the Respondent Nos. 3 to 22 and, therefore, they could not have stitched HDPE bags. The respondents had explained that their rent agreement included the electricity charges and, therefore, they were not having separate electricity connection in their own name. We find that Revenue has also disputed that first the Superintendent of the Range under his letter dated 7.10.96 has intimated that no intimation of the closure of the factory was received but subsequently, in the proceedings before the Commissioner, another letter was sent where the intimation of the closure of the factory was said to have been received by the office of the Superintendent as well as Asstt. Commissioner. We find that whether the intimation of closure was received or not it may lead to suspicion about the non-working of the factories about a month, but it cannot establish the case of the department that throughout the period for which the show cause notices have been issued, these factories were not working. The respondents have produced the evidence in the form of visit of the central excise officers and audit officers to their factories on various dates and also verification of the export consignments and goods received under Chapter X Procedure. Therefore, it cannot be said that these factories were not in existence. We also find that the Revenue has failed to establish that there has been managerial control over the activities of these 22 respondents (Sl. No. 3 to 24) by the Respondent No. 1. Only the workers of Respondent No. 1 were working as authorised signatory in some of the units but the managerial control was not being exercised by the Respondent No. 1 on these units.

9. In order to establish a common link between Respondent No. 1 and Respondents No. 3 to 22, there must be clear evidence that Respondent No. 1 was having a financial and managerial control over the activity of Respondents No. 3 to 24. We find that no such evidence was produced before us. Whatever evidence was collected by the Revenue was inter-dependent of Respondents No.

3 to 24 with Respondent No. 2 and not with the Respondent No. 1. We find that sufficient evidence was produced by the respondents before the Commissioner that respondents No. 3 to 24 were not non-existent dummy unit. We also find that the officers have visited these units for several years and their returns were accepted. Even after the visit of the officers on 16.5.96, some of the units, which continued to manufacture goods were filing the returns and the same were assessed by the Revenue. We, therefore, find no reason to the claim of the Revenue that the clearance of the 22 respondents (Sl. No. 3 to 24) should be clubbed with the clearance of Respondent No. 1 for charging central excise duty. We do not find any infirmity in the order of the Commissioner and accordingly reject the appeals of the Revenue.

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