

Collector of Central Excise Vs. Print Origin Company

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-14-1996

Reported in : (1997)(90)ELT180TriDel

Appellant : Collector of Central Excise

Respondent : Print Origin Company

Judgement :

1. This is a deptt's appeal filed with reference to the order of Collector (Appeals), Bombay dated 27-3-1986.
2. It was observed from the records that the respondents have waived personal hearing and prayed that the appeal may be decided on merits taking into account their written submission.
3. We have perused the written submission of the respondents herein and heard the Id. SDR.
4. The Id. DR stated that the respondents are manufacturers of electric motors.
5. They had submitted a Classification List wherein they had claimed exemption under Notification No. 80/80-C.E., dated 19-6-1980 (as amended) in respect of such motors.
6. The assessees had further declared that they were manufacturing electric motors up to April, 1982 on behalf of M/s. Automatic Electric Ltd. (AEL), Thana and the A.C. vide his order dated 10-9-1980 had also decided that clearances of

M/s. AEL, Thana, should be included in the value of clearances of M/s. Print Origin & Co., for determining eligibility to Notification No. 71/78 dated 1-3-1978.

7. The assessee had also furnished a declaration dated 16-7-1982 regarding the value of all excisable goods cleared by M/s. AEL, Thana during the financial year 1981-82. In the declaration dated 6-5-1982, they had declared the value of clearances pertaining to M/s. Print Origin, Lonavala.

8. On going through these two declarations, it was observed that the total value of clearances of all excisable goods cleared by M/s. Print Origin, Lonavala and M/s. AEL, Thana exceeded Rs. 20 lacs during 1981-82 and therefore, they were not eligible for exemption under Notification No. 80/80-C.E.9. It was the deptt.'s contentions that exemption under Notification No. 80/80-C.E. could not be allowed on the ground that they were manufacturing electric motor on labour basis from the materials supplied by M/s. AEL and prices of such goods were determined on the basis of invoices of M/s. AEL, Thana.

10. He would also like to emphasise that eligibility of exemption for the year 1982-83 was required to be determined on the basis of clearances effected during the previous financial year namely 1981-82 and the price list filed by Print Origin, Lonavala was in Part IV which was in respect of sale of excisable goods to or through a related person.

11. The provisions of Notification No. 80/80 relate to the aggregate value of clearances of excisable goods cleared by a manufacturer himself or on his behalf, for home consumption, from one or more factories and since this value exceeded the prescribed limit, they were not entitled to the said benefit.

12. The Collector (Appeals) has however, allowed the appeal of the assessee against the order of A.C. on the ground that the assessee was not a dummy Co. set up by M/s. AEL and in the instant case, it would be incorrect to add the clearances of the other factory to that of the respondents when no commonality of interest has been established. Hence, the appeal.

13. In this connection, he would like to draw attention to the fact that the transactions were required to be examined to determine as to who is a real manufacturer, and therefore, the following points are relevant - (i) The raw materials are entirely supplied by M/s. Automatic Electric Co. Ltd. (vi) The respondent do not get any share in profit on ultimate sale of goods in the wholesale trade.

13A. He would also like to cite the case of Shree Agency reported at 1977 (1) E.L.T. (J168) (SC) - 1976 Cen-Cus Page 94-D decided by the Supreme Court in support of his contention inasmuch as in similar circumstances the Supreme Court had held that Shree Agency was the manufacturer of the goods within the meaning of Section 2(f) of CESA, 1944 since it includes one who engages in the production or manufacture himself or employs hired labour; and therefore, one who supplies raw material and gets goods manufactured through an independent contractor is also covered by this definition.

14. Hence it was their prayer that it may be held that M/s. AEL are the manufacturer of the goods and therefore, in view of the turnover of M/s. AEL during the preceding year, the goods were not entitled to exemption under Notification No. 80/80-C.E.15. The respondents herein have in their written submissions stated that the case of Shree Agency was distinguishable from the present one.

In that case, it was held that appellants did not own any factory but were real manufacturers and labourers had no interest in the production of cloth and it was the appellants who were actually engaged in the production at different factories.

16. It was also their contention that the issue is fully covered by the Tribunal's decision in the case of Lucas India Services Ltd. [1984 (16) E.L.T. 415 (Tribunal)] in which the Tribunal itself has distinguished the Supreme Court's judgment in Shree Agency's case.

17. It was also their contention that the issue could not be considered in the light of filing of the price-lists in para IV because such prices are required to be shown with reference to the valuation under provision of Section 4(4)(c) of CESA, 1944

and in the light of related person concept which is a concept adopted for valuation purposes but has no bearing on exemption Notification No. 80/80-C.E. The issue with which are concerned is covered by the Tribunal's decision in the case of Alpha Toyo Ltd. [1994 (71) E.L.T. 689 (Tribunal)].

18. In the present case, the respondent was doing only job work for M/s. AEL who owned the said electric motors and therefore, the price lists were filed in Part IV in terms of Section 4(4)(c). M/s. AEL was not otherwise related to the respondent in any manner as there was no financial flowback or mutuality of interest in each other's activity and M/s. AEL was not a dummy Co. of the respondent.

19. The respondent further relied upon the ratio of the order of the Tribunal in Nikhildeep Cables Pvt. Ltd. [1994 (70) E.L.T. 273 (T)] wherein the Tribunal has held that the value of clearances separately licensed and functioning under two different premises is not to be clubbed. It was their contention that they were not operating as one unit or entity, there being no financial connections. They would also like to draw attention to the case of B.N.K. Engine Parts Pvt. Ltd. passed by the Hon'ble Madras High Court reported in 1991 (56) E.L.T. 19 and prayed that the deptt.'s appeal may be dismissed.

20. We have considered the above submissions. We observe that the respondent herein is the assessee who had claimed benefit of exemption Notification No. 80/80-C.E. but the deptt. has sought to deny the benefit thereof by clubbing its clearances with those of M/s. AEL, Thana, on the ground that their combined clearances exceeded the prescribed limit in the previous financial year; on the basis of their own report M/s. AEL were the manufacturers of the excisable goods in question.

21. If M/s. AEL were the manufacturers as held by the departmental authorities and prayed in the memorandum of appeal before us, the action, if any due, was required to be directed against M/s. AEL and not against M/s. Print Origin; In other words SCN ought to have been issued to M/s. AEL and the question of clubbing exemption w.r.t. them.

However, we find that they have not been even associated with the proceedings at any stage and the deptt. action has been directed against M/s. Print Origin who have stated that they were only job workers.

22. The legal position is that a job worker was required to be treated as independent manufacturer as already settled by a series of orders of this Tribunal. The case of Shree Agency is distinguishable where it was not the case of job workers but of labourers engaged for and on behalf of real manufacturer.

23. The Id. DR is correct in pointing out that for purpose of clubbing, it is not necessary to show that one of the units is a dummy unit but the respondents are right in pleading that it must be shown that the criteria laid down in the various orders of the Tribunal for such clubbing are met with. The deptt. has not produced any such evidence.

It has not been able to show that the respondents contentions that they were merely job workers was in any way factually incorrect. The respondents have relied upon a catena of judgments cited by them including the case of Lucas Indian Services Ltd. (supra) (which in turn relied on Madras High Court judgment in the case of M/s. B.K.N. Engine Parts Pvt. Ltd. Tribunal's decision in Alpha Toyo Ltd. (supra) and Nikhildeep Cables Pvt. Ltd. (supra) and have rightly pleaded that the Madras High Court has held that a job worker is deemed to be actual manufacturer when relationship between raw material supplier and him is on principal to principal basis.

24. The deptt.'s contention that the clearances of M/s. AEL were required to be clubbed with the clearances of respondents on job work basis for the purpose of denying the benefit of the Notification No.80/80 to the latter is therefore, not acceptable. In fact, in the absence of evidence the department's case remains unsubstantiated; And in any eventuality if it is M/s. AEL which had exceeded the prescribed limit the proceedings have been misdirected against the respondents.

25. We therefore, see no reason to interfere with the order of the Collector (Appeals). The department's appeal is therefore, rejected, as already announced in open court.

