

Commissioner of C. Ex. Vs. Chandan Chicory Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-07-1997

Reported in : (1998)(103)ELT670Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Chandan Chicory Industries

Judgement :

1. In both the appeals of the Revenue, the question of law and facts are similar hence they are taken up together for disposal. The Revenue has challenged two separate orders passed by the Collector (Appeals), Ahmedabad. The issue was common before the Collector in both the appeals i.e. as to whether supplier of the raw material in part or full i.e. M/s. Brooke Bond India is a manufacturer under Section 2(f) of Central Excises and Salt act, 1944. On a detail examination of the facts and case law, the Ld. Collector has come to the conclusion that the supplier of raw material namely Brooke Bond is not a manufacturer and the clearance by the Respondents/Assessees cannot be clubbed with the clearance of Brooke Bond. He has held that the assesses are independent manufacturers and therefore clearances are required to be taken independently and granted the benefit of exemption Notification No. 175/86 which grants exemption to Small Scale Industries. In support of his conclusion that Ld. Collector has held that the Department has not produced any evidence to show that the assessee is a dummy unit or a unit set up by Brooke Bond India. He has examined the contract and has held that the relationship between them is at arms length and on principal

to principal basis. He has also noted that Brooke Bond has supplied only some raw materials, whereas other items such as Vegetable Ghee etc. is purchased by the assessee themselves and on that basis has concluded that the contract is a commercial one. The Id. Collector has examined the contract and has noted that it clearly specifies some condition restriction for quality Control such as drawing of sample, manufacturing of goods of a quality under hygienic condition. To keep accounts of loss so that raw materials is not sold by showing more processing loss hence fixing a percentage of loss. On reading these conditions, the Ld. Collector has held that the conditions are only for quality control and inference cannot be drawn to the contrary.

2. Arguing for Revenue the Id. DR Shri D. Gurnani relied on the grounds of appeal and submitted that the assessee's were labour contractors and therefore they are not the manufacturers, but it is only the Brooke Bond India, and hence benefit of exemption notification should not be extended to the Respondent and relied on the Judgment referred in the appeal memo. The Ld. Advocate submitted that the Id. Collector has correctly applied the law and has noted all the citation and has applied the ratio laid down by the Tribunal pertaining to the clubbing of clearances. He pointed out that there was no allegation from the Revenue that the assessee's were dummy units and were not in existence and that existence was only on paper. He relied on the various finding given by the Collector pertaining to the relationship being on principal to principal basis. The Id. Advocate brought to our notice the latest Supreme Court Judgment rendered in the case of *Basant Industries v. Collector of Central Excise, Kanpur* reported as 1995 (75) E.L.T. 21 (S.C.); *Collector of Central Excise, Bombay-III v. Pressure Cookers & Appliances Ltd.*, 1995 (79) E.L.T. 160 (Tribunal). He further pointed out that the ratio of these Judgments has since been applied by this Bench recently in the case of *Larsen & Toubro Ltd. v. Commissioner of Central Excise, Mumbai-II* as per Final Order No. 3560/96-WRB, dated 6-10-1996.

3. We have carefully considered the submissions made by both sides, and have perused the impugned order as well as the citation referred to before us. Now it is well settled that for clubbing the units, the department has to prove that there has been financial flowback and the unit is non-existing and a dummy unit. In this case

the facts have been gone into in great detail by the Collector (Appeals) and has examined the terms of contract has found that the relationship between Brooke Bond India and the respondents is on principal to principal basis at arms length. He has also noticed the respondents being an independent manufacturer and has received only few of the raw materials from Brooke Bond India. Whereas the other raw materials are independently purchased by the respondents themselves. He has also noticed that the contract specifies quality control and such grounds of quality control by itself in a contract, is no cause for clubbing the clearances with the supplier of raw material namely Brooke Bond. This aspect of the matter has been gone into by the Tribunal in a number of Judgments and it has been laid down that such clauses will not be a reason for clubbing the clearances unless the unit set up is a dummy unit or that there is financial flowback. In this case a categorical finding has been given that the units are not dummy ones and there is no financial flowback either. The revenue has not made out grounds to apply the ratio of the Judgment rendered in the case of H. Guru Instruments (P) Ltd. v. Collector of Central Excise, reported as 1987 (27) E.L.T. 269 (Tribunal). In Guru Instruments case there was no relationship on principal to principal basis. Likewise Ld. Collector has differentiated the ratio of the Judgment rendered in the case of Shree Agency 1977 (1) E.L.T. (J 168). The Tribunal has noted the Judgment of Hon'ble Supreme Court rendered in the case of Basant Industries (supra) as in the case of Larsen & Toubro Ltd. in its final order referred (supra) and has answered a similar question in the same line upholding the assessee's contention that the clearances of goods manufactured on principal to principal basis cannot be clubbed with the clearances of supplier of raw material. In view of these facts not having been disputed by the Department, the findings adopted by the Collector is in accordance with the ratio laid down by Hon'ble Court in Basant Industries case. Hence we do not see any reason to interfere with the same. Therefore we reject these appeals and confirmed the impugned order.