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S.G. Engineers Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-09-1999

Reported in : (1999)(83)LC11Tri(Delhi)

Judge : P Jain, Vice-, A Unni

Appellant : S.G. Engineers

Respondent : Cce

Judgement :

(1) The appellants purchase the raw materials, get certain processes undertaken by job workers. Those goods are received back by the appellants from the job workers in their own factory premises wherein certain other processes are undertaken by the appellants and then the finished goods are supplied to the Perfect Drop Pns (PDP).

(2) The appellants herein which is a proprietory concern of one Mrs.

Bina Gupta supply the goods to PDP which is a proprietory concern of Shri S.M. Gupta, husband of Mrs. Bina Gupta are related to each other and therefore, the value of goods at which PDP supplied to the Defence Organisation has to be taken for the purpose of determining the value of the goods manufactured and supplied by the appellants and then compute the aggregate clearance of the appellants for the purpose of determining whether they are entitled to the benefit of Notification No. 175/86-CE.2. On the first allegation mentioned above, Defence

contention is that the appellants are getting the goods manufactured from independent job workers. The entire list of job workers along with their addresses were given to the Central Excise Officers during the course of investigation as clearly mentioned in their reply to the show cause notice but no investigations or enquiries have been made by the Central Excise authorities to determine whether the job workers are really independent workers or they are merely hired labour, as alleged above. It is also contended by the appellants that the goods manufactured by the job workers were sent directly by those workers, though no doubt at the instruction of the appellants, directly to PDP. No semi-finished goods were at all received by the appellants from the job worker's premises.

The evidence of inspection in the form of letters from the Defence Organisation relied upon by the lower au thority to contend that the goods were manufactured and inspected at the appellants' premises is not a reliable evidence for the goods manufactured by the independent job workers and sent directly to PDP inasmuch as the appellants themselves manufacture such goods.

3. We have carefully considered the pleas advanced from both sides, as already mentioned above on the first question i.e. whether the job workers of the appellants are independent manufacturers in their own right or whether they are hired labour of the appellants. We observe that the department has not brought any material whatsoever on record by way of statements of the job workers that such job workers were merely hired labour of the appellant. The department is merely trying to infer basically from the statement of Shri Kalicharan, an accountant employee of the appellants who appears to have admitted that he made all the pucca accounts at one stroke from the kachha accounts maintained by the appellants from time to time. We believe that this evidence is not sufficient to hold that the appellants were the main manufacturers and the job workers were merely the hired labour of the appellants. We, therefore, hold in the absence of any adequate evidence brought on record by the Revenue and for which the burden squarely lies on the Revenue that the job workers of the appellants cannot be treated as hired labour. Consequently, the clearances of the goods manufactured by job workers attributed to those job workers cannot be included in the value of the goods manufactured by the appellants.

4. In view of our finding on the first question, it is not necessary to go into the second question because the appellants would then be entitled, it is not disputed by either side, to the benefit of Notification No. 175/86-CE. We further observe that the Tribunal in the case of Bee Gee Enterprises v. CCE New Delhi vide its Order No.A/947/95-NB has come to a similar finding regarding the status of Bee Gee Engineers who were also getting the goods manufactured from job workers.

5. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief to the appellants.

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