

Commissioner of C. Ex. Vs. Jackson Engineer Pvt. Ltd

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-26-1999

Reported in : (2000)LC486Tri(Delhi)

Appellant : Commissioner of C. Ex.

Respondent : Jackson Engineer Pvt. Ltd

Judgement :

1. There was a controversy in this case regarding the date of passing of the order by the Principal Collector Delhi. The authorities were directed through the Id. DR to produce the relevant file of the adjudication. The file could not be produced by the authorities before Tribunal because it is reported to have been misplaced somewhere.

However, the Id. DR has placed the adjudication order register for the period 1984-88. The entry in the register shows that the adjudication order No. 101/88 has been passed on 21-11-1988 by Shri Tarun Roy, Principal Collector. File No. given is V-(68) 15/72-CE/85 and party's name is Mr. Jackson Engineers Pvt. Ltd., C-267, Maya Puri Industrial Area-6, Delhi. Therefore, we can take the date for passing of adjudication order as 21-11-1988 because the register has been kept in normal course and there are serial numbered entries relating to various adjudicating officers.

2. It is admitted on record that the Board has passed the order under Section 35E on 15th November, 1989 but it has been communicated to the Commissioner on

27-11-1989.

3. Ld. Advocate Shri Naveen Mullick urges a point that expression 'make an order' in Sub-section (3) of Section 35E to the effect that "no order shall be made under Sub-section (1)-----after expiry of one year from the date of decision or order of the adjudicating authority" will mean that the Board's order should be communicated to the adjudicating authority, namely the Collector within one year; otherwise the word 'make' will create an administrative chaos because, he elaborates this point by stating that Section 35E envisages giving the direction to the Collector. So unless the directions are given within one year from the date of decision or publication of the order by the adjudicating authority the order cannot be said to have been made by the Board. By giving an example he submits that if Member of the Board makes an order apparently within one year from the date of adjudication order but deliberately or inadvertantly, the file is kept for six months or so, then the whole process under Section 35E will become a mockery.

Therefore, he submits that the word 'make' under Sub-section 3 of Section 35E should be read in the sense of communicating the order passed by the Member. He further fortifies his views by bringing the meaning of the word 'make' as given in The World Book Dictionary. One of the meanings given for the word is "to reach", "arrive at". An example has been given that the "ship makes harbour"; "the basic party makes a settlement". He therefore, submits that in this sense the order passed by the Board must reach the Collector within the period of one year in terms of Sub-section (3) of Section 35E otherwise it cannot be said that the Member has made an order within one year of the date of decision of the order by the adjudicating authority. He has read before the Bench, paras 17 and 18 of the Supreme Court's judgment in the case of MM. Rubber reported in 1991 (55) E.L.T. 289 (S.C.).

4. Opposing the contention, Id. JDR Shri M.P. Singh submits that the word 'make' is in the sense of passing the order. This meaning becomes clear from para 12 of the Supreme Court order relied upon by the Advocate. He specifically points out that one of the sentences given in the said para out of Supreme Court's judgment (supra) is as follows : "The date of such order or decision is the date on which the

order or decision was passed or made : that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have no locus paeten-tiae." Ld. DR submits that the Apex Court has obviously used the words "order passed or made" in synonymous terms, therefore, the order has been passed by the Board within one year for meeting the requirement of Sub-section (1) and Sub section (3) as regards the fear of the Id.Advocate, that the Member of the Board may keep the order after signing or passing it for six months and whole process will be mockery of law.

Ld. JDR submits that Member of Board is a very senior officer and such bad faith should not be attributed to him. The entire legal process depends on faith and some checks and balances are called for. Such a bad faith in position of such a senior man should not be normally assumed. He therefore, submits that the order passed by the Board is well within the ambit of Section 35E and the objection of the Id.Advocate be over ruled.

5. We have carefully considered the pleas advanced from both sides.

Having regard to the submissions of Id. DR and also keeping in view the judgment of the Apex Court in MM. Rubber case, we overrule the objections of the Id. Advocate for the respondents, and thereafter we proceed to hear the appeal of the Revenue.

6. Briefly stated the facts of this case are as follows: There is a partnership firm styled as Jacksons and Co. It was established in 1951.

In 1982 another unit a Pvt. Ltd. Company styled as Jackson Engineering and Pvt. Ltd. was established. All the three brothers and two sons in Jackson and Co. are partners and also the Directors in the Pvt. Ltd. Co. In addition there is one more Director in the Pvt. Ltd. Co. by the name of Shri Kashmiri Lal who is brother-in-law of the said partners.

7. In the course of transit of generating sets in knocked down condition despatched by the Pvt. Ltd. Co., these were detained by the Central Excise officers. They found that the invoice described the goods as a generating set and

yet the separate parts were there showing apparently entire activity as one of the Trading. This created a doubt in the minds of Central Excise officers. On visit to the premises of the Pvt. Ltd. Co. they found that the said Pvt. Ltd. Co. who had made the invoice for the generating sets detected in transit were working in a big hall of 4" x 7" high wall. One part of the hall was occupied by the Jackson and Co. and the other part was occupied by the Pvt. Ltd. Co. The partnership firm was manufacturing the base plate with the aid of power and transferring the same with the help of chain pulley to the other side of the hall i.e. Pvt. Ltd. Co. Thereafter the Pvt. Ltd. Co.

mounted the alternators and engines on the base frame for alignments of the various parts and dispatch the generating set to its customers in the form of invoice as mentioned above. It is not disputed that the mounting by the Pvt. Ltd. Co. was not done with the aid of power.

Although Revenue has now relied in its appeal that the statement of Shri S.K. Gupta indicated that the Pvt. Ltd. Co. was using power sometime in mounting the radiator and engine on the base frame to which the Id. Advocate for the respondents at this stage points out Radiator is an accessory and not essential component of generating set.

8. A case was therefore, made out by the Revenue holding that the generating set was being manufactured by the Pvt. Ltd. Co. with the aid of power, thereby they were not entitled to the benefit of Notification No. 179/77, dated 18-6-1976. It has also been alleged by the Revenue that the partnership firm and the Pvt. Ltd. Co. are one and the same unit and that the workers of both the units are same. Consequently, the benefit of 179/77-C.E. would also not be available to Pvt. Ltd. Co. for deciding the durability of the generating set.

9. On adjudication the Principal Collector of Central Excise has held in favour of the respondents herein holding that no power was being used in manufacture of generating sets inasmuch as mounting was being done without the aid of power. He has also relied upon the Boards instructions issued from file No. 12/18/84-CX. I, dated 19-11-1985 which holds that when power is used in process of manufacture of raw materials or components and such raw materials and

components are separately excisable then the benefit of Notification No. 179/77-C.E. cannot be denied if no power is used in assembling such components. In the present case power is used for manufacturing the component namely base frame. It has also been held by the adjudicating authority that the two units namely partnership firm and the Pvt. Ltd. Co. cannot be considered to be one and the same unit. They have separate entities. It is against the aforesaid order that the Revenue nos. now come in appeal.

10. Ld. JDR Shri M.P. Singh points out that Pvt. Ltd. Co. was established in 1982 as already stated above. One of the objections of the Company in its Articles of Association was that Pvt. Ltd. Co. was to take over the partnership firm. All the brothers in the partnership firm are also the Directors of Pvt. Ltd. Co. and both the units are working in the same hall, except that wall has been erected for the purpose of separating the two. It is therefore, one and the same premises that the two units are working in. Telephone connection is also the same. There is no lease/rent/deed for rent executed by Pvt.

Ltd. Co. with the partnership firm. Power is supplied to the Pvt. Ltd. Co. from the partnership firm. At times workers are also common. An example has been given in the show cause notice. Based on these facts, it has been urged by the Revenue that both the units are one and the same. Since the base frame has been admittedly manufactured with the aid of power, therefore, taking all the process as integrated process it can be held that power has been used in manufacture of DG sets.

11. As against this Ld. Advocate Shri Naveen Mullick draws attention to the finding of the adjudicating which we have already set out above. He has also drawn attention to the instructions of the Board dated 19-12-1985 on which reliance has been placed by the adjudicating authority. He submits that it is well settled proposition of law that Revenue cannot argue against the Board's direction. At the time of adjudication this instruction was on record and proper cognizance has been taken by the adjudicating authority. In the light of these instructions, Ld. Advocate submits that whether the units are to be treated differently or whether the units are to be treated as one and the same, the facts remained that DG sets

have been assembled without the aid of power and there cannot be any dispute about it. He has drawn attention to the cross-examination statement of Saluja, Inspector Central Excise (available at page 72 of the paper book) wherein it has been clearly admitted that in the assembly of DG sets, no power is being used.

12. We have carefully heard the pleas-advanced from both the sides. We agree with the submissions of the Id. Advocate Shri Mullick that in the face of the Board's instruction dated 19-12-1985, it cannot be contended by the Revenue that DG set has been manufactured with the aid of power, irrespective of the fact that power has been used in the manufacture of base frame since base frame is a well recognised separate commodity used as a component in DG set.

13. Shri Naveen Mullick has stated while making his submission, that it is immaterial whether assembly is being done treating them as two units or as one unit. In support of this proposition Id. Advocate relies upon the case of Collector of Central Excise, Bombay v. Kores (India) Ltd. reported in 1997 (89) E.L.T. 441 (S.C.). In view of the foregoing, we dismiss the appeal of the Revenue.

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