

Ma Care and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-15-1999

Reported in : (2000)(88)LC80Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Ma Care and ors.

Respondent : Cce

Judgement :

1. These are applications for waiver of deposit of duty of Rs. 3.4489 crores demanded from M/s. TTK Pharma Ltd. [TTK for short] (application E/2930/98) and penalty of Rs. 2 crores on it under Rule 173Q and a fine of Rs. 5 lakhs to redeem land, building and machinery confiscated, and penalties under Rule 209A of Rs. 1 crore on M/s. Ma Care (application E/2928/98), Rs. 5 lakhs on M.V. Kumar (application E/2931/98), managing director of TTK, Rs. 5 lakhs on Jhunjhunwala (application E/, partner of Ma Care, and Rs. 2 lakhs each on Hariharasubramaniam (application E/2932/98) and M. Rangachari (application E/2933/98), employees of TTK.2. The common advocate for all the applicants says that the duty has been demanded and penalty imposed on the Commissioner's finding that the product known as Woodward's Gripe Water which is stated to be manufactured by Ma Care was in fact manufactured by TTK and therefore assessable value should be based on price at which TTK sold the goods to its dealers. He contends that the Commissioner has concluded that Ma Care was nothing more than hired labour under the strict and comprehensive direction

and control of TTK. He raises the following contentions in respect of the application for waiver of deposit.

3. There is a contradiction between the notice to show cause and the Commissioner's order with regard to the relationship between TTK and Ma Care. Notices allege that Ma Care was an agent of the applicant, whereas the Commissioner has found Ma Care to be nothing more than hired labour. The conclusion of the Commissioner that raw material for the making of product was supplied by TTK was not correct. It was one single transaction for supply of a raw material that was made by TTK, and that too on loan. The Commissioner has not considered detailed evidence produced before him that Ma Care purchased its raw materials except the special blue wrappers and labels, which gave the product its particular identity in the market, from buyers different from those who supplied the goods to TTK. The correspondence between Rangachari who was the representative of TTK at Chakan where Ma Care's factory is situated and TTK has been misinterpreted to show control over functioning of Ma Care by TTK. TTK had made a number of suggestions as good commercial practice to be followed by Ma Care the majority of which has in fact not been implemented by Ma Care. The Commissioner has disregarded the contention that except for small items, machinery that Ma Care plant was its own.

4. The extended period of limitation will not apply. On the identical grounds as in the present proceedings notice has been issued earlier, which finally resulted in the order of the Collector (Appeals) holding that TTK and Ma Care are not related persons. The order of the Collector was made in 1990. The contention in the notice that there was suppression of facts before that those proceedings is clearly not maintainable. Subsequent to the Commissioner's order, two notices have been issued to Ma Care in which it is treated as the manufacturer and duty has been demanded from it. In computing the duty payable the Commissioner has not been taken into account abatements claimed.

5. The departmental representative contends that the extended period will apply. The notice itself alleges that there was suppression in the earlier proceedings, and subsequently, of the true state of affairs between the two. The fact of TTK

exercising control over every phase of manufacture through Rangachari, its representative at Chakan, the direction to Ma Care to purchase raw materials from suppliers specified by TTK and various directions have been given from time to time with regard to practices to be followed, shows this to be the case. There are instances of supply of raw materials free of cost which also support this view. The fact that the agreement between the two for renewal of the agreement has been antedated, shows that it was done in order to satisfy the requirement of the Excise Department and was not genuine.

6. The facts and circumstances have to be considered in detail before the native relationship between Ma Care and TTK is determined. There are arguments by both sides as to the supply of raw materials. Whether the presence of Rangachari and various directions made by TTK and communicated by him to Ma Care is in the nature of recommendations or orders also is arguable. It is not possible therefore on merits to say that the applicant has made out prima facie case. The applicant has, however, somewhat stronger case with regard to limitation. The fact remains that notice was issued in 1990 proposing to hold TTK as manufacturer. On that the Collector (Appeals) has finally held this not to be the case and the two to be functioning at arms length is of significance. The contention that this order was obtained by suppression if prima facie difficult to accept that the Department would have access to in the course of investigation cannot have material requirement. It is somewhat difficult to say that there has been suppression of facts despite investigation by the Department. It is prima facie difficult to accept there was such suppression. The matter however is arguable.

7. In these circumstances we direct deposit within two months of the receipt of this order by TTK of Rs. 80 lakhs towards duty and penalty and by Ma Care of Rs. 10 lakhs towards penalty on it and its employees.

On such deposit, we waive deposit of the remainder of the duty demanded and penalties imposed.

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