

Bathija Enterprises Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-17-1999

Reported in : (2000)LC194Tri(Delhi)

Appellant : Bathija Enterprises

Respondent : Collector of Central Excise

Judgement :

1. These are four appeals filed by M/s. Bathija Enterprises being aggrieved by the common Order-in-Original No. 59/92, dated 17-12-1992 passed by the Collector of Central Excise, Bombay-II. 2. The matter relates to the clubbing of the clearance of the three units, namely : M/s. Bathija Enterprises is a Proprietary concern. The goods in dispute are Playing Cards. The Adjudicating Authority had raised demand of Rs. 1,71,937.20 and had imposed penalty of Rs. 40,000/- on M/s. Bathija Enterprises, and penalty of Rs.5000/- each on Shri Anil Bathija, Beauty Pack Industries, M/s. Anil Packaging and Sharp Printers. The Appellants have prayed for decision on merits. In their written submission they have submitted that under Notification No. 73/86-C.E., dated 10-2-1986 sports goods are under exemption and it has been held by the Tribunal as Playing Cards were of sport goods. The period involved in this proceeding is from April, 1984 to March, 1989 and that with effect from April, 1986 to March, 1987 as the goods were covered by the Exemption no demand is sustainable. They have submitted that out of the total demand of Rs. 1,71,937.20 the demand of Rs. 1,42,795/- will have to be vacated. In view of the exemption Notification dated 10-2-1986 for the rest of the demand

for Rs. 29,124/- also they said all the three units were independent and had independent customers and there was no ground for clubbing the clearances and deny the S.S.I. exemption to the individual unit..

4. We find that the various grounds on which it has been proposed that no separate exemption under S.S.I. Notification was available to the three units as mentioned in the show cause notice as under : (i) The Partners/Proprietors of the four units were blood relations being husband, wife and sons.

(ii) One Supervisor viz. Shri Prakash Hassija was looking after and managing the affairs of all the three units in the absence of the owner of the respective companies without giving any extra compensation.

(iii) Brand name of the product 'playing cards' is the same for all the units.

(iv) Shri Bhagwandas Bathija, Proprietor of M/s. Bathija Enterprises was managing the affairs of all the three units. 21/1153 5. These grounds have been discussed by the Adjudicating Authority and it had observed that earlier Bathija Enterprises were manufacturing Playing. Cards since 1980. Subsequently, three units were floated i.e.

Anil Packaging, Beauty Pack Industries and Sharp Printers. M/s. Bathija Enterprises continued to print sheets for production of Playing Cards and these three units were processing the sheets for final manufacture of the Playing cards. From the statement of the assesseees as well as other persons concerned with their operations, it is clear that for all purposes all three units were be treated and taken as the units of M/s.

Bathija Enterprises. The brand name was the firm of M/s. Bathija Enterprises and all the three units were producing Playing Cards with the brand name. There was common utilisation of the raw materials, common place, and in a number of cases goods were also common. The Adjudicating .Authority has also discussed that in the instant case extended period of limitation is applicable. He had also discussed various Tribunal decisions and the law. He also concluded that when the total facts are taken into account there is no doubt that Bathija Enterprises had floated three

units and were managing the affairs of these three units were not having individual entity.

5. The main ground taken by the Appellants is that for the period March, 1986 to March, 1989 the goods i.e. Playing Cards were exempt from duty and reference has been made to the Tribunal decision in the case of Esbee Playing Card Co. v. C.C.E., Bombay reported in 1997 (90) E.L.T. 357 (T) and Shiv Packaging Corporation v. C.C.E., 1998 (103) E.L.T. 93 (T). The Id. DR has nothing to say with regard to the Tribunal decision. The Revenue involved in respect of these period from March, 1986 to March, 1989 comes to Rs. 1,42,795.00 according to the calculation given by the Appellants in their written statement.

Following the aforesaid Tribunal decision we agree with the appellants that for the period March, 1986 to March, 1989 the duty was not demandable in respect of the playing cards. As regards the clubbing of the clearances the facts and circumstances justify the view taken by the Collector of Central Excise. The demand in this regard having been indicated by the Appellants as Rs. 29,124/-. The Adjudicating Authority had relied upon the Tribunal decision in the case of Priya Corporation v. C.C.E. -1990 (48) E.L.T. 26 (T) wherein the Tribunal has observed that when the three units having common proprietary interest controlled by only one person when the units were having common fuel, machinery and the labour and there was interconnection in various respects within the units the value of clearances were liable to be clubbed for the purposes of S.S.I. On limitation also the Tribunal had held that when the main unit had been fragmented into two different units to avail exemption the extended period of limitation can be invoked. In the facts and circumstances of the case while we are allowing the Appeal insofar as the period March, 1986 to March, 1989 is concerned, we confirm the duty liability for the period from March, 1984 to 28-2-1986.

6. In view of the above, the amount of penalty imposed on M/s. Bathija Enterprises is reduced from Rs. 40,000/- to Rs. 10,000/- (Rupees ten thousand). The amount of fine in lieu of confiscation of plant and machinery is also reduced from Rs. 10,000/- to Rs. 5,000/- (Rupees five thousand). Further M/s. Bathija Enterprises was a Proprietary concern of Shri Bhagwandas Bathija separate penalty of Rs.

5,000/- on Shri Bhagwandas is also set aside. The rest of the order subject to above is confirmed. Appeals are disposed of in the above terms.

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