Universal Industries Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-08-1999

Reported in : (2000)(115)ELT704Tri(Mum.)bai

Appellant : Universal Industries

Respondent : Commissioner of Central Excise

Judgement :

1. These five applications relate to five appeals arising out of the same impugned order. After hearing Shri V.S. Nankani appearing along with Shri A.G. Kulkarni, C.A. for the applicants and Shri Deepak Kumar, SDR for the Revenue, the main appeals themselves were taken up for disposal after granting stay and waiver of the duty amounting to Rs. 25,58,869/- and equivalent penalty imposed under Section 11AC. In the proceedings leading to the impugned order, it was alleged that the production of the six units were required to be clubbed together for calculation of the duty payment. The Commissioner of Central Excise in his order held that two of the units were shown to be independent and therefore, their production should not be clubbed with the production of the other noticee. He, however, on conclusion of the discussion passed the following order : "I confirm demand of Central Excise duty amounting to Rs. 23,59,649/- from Shri R.H. More. Proprietor and other noticees under Rule 9(2) of the Central Excise Rules, 1944 and Section 11A(2) of the Central Excise Act, 1944. I demand differential duty amounting to Rs. 1,79,645/- from M/s. Universal Industries. I also demand duty amounting to Rs. 19,575/- from M/s. Universal Construction Equipments Co. Ltd.

and the amount paid by them should be adjusted against the duty demanded." 2. As part of the order a document shown as Annexure II was appended showing detailed duty liability and division of its duty liability amongst 5 units.

3. During the arguments both sides agreed that the action of the Commissioner in holding that the clearances of the units should be clubbed and at the same time confirming the duty against the same constituent unit which was the situation covered in the judgment of the Supreme Court in the case of Gajanan Fabrics Distributors v. C.C.E.1997 (92) E.L.T. 451 (S.C.). In an identical situation, the Supreme Court has set aside the Tribunal's order and directed the Commissioner to decide the issue afresh.

4. In dealing with the similar situation, the Tribunal in their Order Nos. C/II-2318-2335/99/WZB, dated 2-9-1999 made the following observation : "When the Commissioner finds that only one unit was the real manufacturer and the other units were merely shadows or dummies then he was required to confirm the demand against one unit and his confirming the demand against all units would amount to tacit recognition of their independent existence. The manner in which the ld. Commissioner has framed his order, would make it appear that he had recognised the independent existence of M/s. Century Trading Company and M/s. Sanjay Electrical Works. However, in his deliberations he has established his conclusion in paragraph 69 of his order in the following words : "69. Hence, there is a sufficient ground for considering the subject four units as a single entity. Therefore, M/s. SEW, M/s. C.T. Co., M/s R.D. Enterprises and M/s. Neelam Enterprises should be considered as single entity. They are liable to pay central excise duty on the clearance value, after clubbing the value of clearances of above fourt units." In view of this conclusion, it was appropriate that the demand of duty should have been confirmed by him against a single unit. In this manner, the facts of this case are identical to the facts before the Supreme Court in the cited order. In these circumstances, we allow the appeals, setting aside the order of the Commissioner.

We remit the matters back to the (sic) and decide the issues afresh.

Adequate opportunity should be given to the parties to state their case. The appellants are directed to cooperate with the Commissioner." 5. In the light of this judgment, we allow the present appeals, set aside the orders of the Commissioner and remand the matters back to the jurisdictional Commissioner to decide the issue afresh. The Commissioner shall give adequate opportunity to the parties to state their case and the appellants shall co-operate with the Commissioner.