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Commissioner of Central Excise Vs. Elemec Inds.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-08-2000

Reported in : (2000)(71)ECC248

Appellant : Commissioner of Central Excise

Respondent : Elemec Inds.

Judgement :

1. In this appeal filed by the Revenue, the respondents are M/s. Elemec Industries, and the order under challenge is of the Collector of Central Excise, Pune. The issue involved is whether the value of clearances of M/s. Elemec Indus, and other three units as mentioned in the show cause notice dated 2-6-1992 should be clubbed as a single unit.

2. The matter was heard on 26-4-2000. Shri Satnam Singh, SDR, submitted that the adjudicating authority had come to a finding thai the full control of all the units rested with the two brothers and that the evidence led by the Department clearly pointed out direct mutuality of interest in both financial and managerial aspects among the Bhatewara family. Ignoring these clear findings, he had passed a contrary order.

The adjudicating authority had summarised the evidence showing a relationship involving mutuality of interest, extra commercial financial involvement and unilateral managerial control over all the four units. Even then, the learned SDR submitted, the adjudicating authority had ignored the evidence as brought on

record, and a different view had been taken mainly on the basis of case law. It was his submission that a case of clubbing had to be decided on the basis of the facts in the particular case and not on the basis of observations in unrelated cases. He referred to the evidence regarding fragmentation of units and suppression of facts with intent to evade payment of duty as detailed at pages 14 & 15 of the show cause notice.

He relied upon the Tribunal's decision in the case of Chabbi Electricals v. CCE, Aurangabad, In reply, Shri A.V. Phadnis, advocate, submitted that the various units were in existence even before the issue of small-scale exemption notification. There was no case for fragmentation of the units. He referred to para 39 of the impugned order-in-original and pleaded that a correct view has been taken by the adjudicating authority. He reiterated the cross-objections filed by the respondents and submitted that in the scheme of small-scale exemption there was no concept of the group of industries.

3. We have carefully considered the matter. The main issue for consideration before the adjudicating authority was whether the clearances of the four manufacturing units (i) M/s. Elemec Indus, (ii) M/s. Shree Electricals (iii) M/s. Anand Auto Electricals; and (iv) M/s.

Shree Stampings should be clubbed together by treating all of them as one unit or otherwise; with legal consequences as referred to in para 31 of the adjudication order. We find that after posing the issues for his consideration in para 31 of his order, the learned Collector of Central Excise; Pune, had without discussing the facts and evidence, proceeded in paras 32 and 33 of his order to draw conclusions from the judgments to which his attention had been drawn by the noticees. It is further seen that the factual position as summarised in paras 34 and 35 is not consistent with his findings in para 39 of the order.

4. In para 34 of the adjudication order, it is observed that in practice the full control of all the units rested with the two brothers and the evidence led by the Department clearly pointed on direct mutuality of interest in both financial and managerial aspects among the Bhatewara family. In para 35, the evidence led by the Department in the show cause notice showing a relationship involving

mutuality of interest, extra commercial financial involvement and unilateral managerial control over all the four units, had been summarised.

Without contradicting the above observations and evidence, we find that the allegations as levelled in the show cause notice have been termed as without base or without foundation, mainly on the basis of case law relied upon by the noticees, as referred to in para 38 of the order.

The conclusion drawn in para 39 is as under - 39. I therefore find that ratio of the various judgments/decisions of Supreme Court/High Court/CEGAT etc. as referred above are applicable to the case on hand. The allegations made by the department against the notcees that all the units or the group deliberately fragmented, managed, financed and controlled by the same group, free flow of raw material within the group companies, common mutuality of interest etc. have no base or without foundation.

5. We consider that the matter had not been analysed by the learned Collector of Central Excise, Pune, with reference to all the evidences brought on record by the Department in the show cause notice.

6. For the purpose of clubbing of clearances to determine the eligibility of small scale exemption the totality of the facts and circumstances had to be analysed. While with reference to isolated facts, the units may appear to be distinct and separate, but when the facts and circumstances are seen in totality seemingly distinct and separate units may turn out to be one common manufacturing entity.

While the financial flow back could be one of the important considerations, it could not be made the sole basis for arriving at the decision, this way or that way.

While the determining factor for clubbing of clearances is the true nature of relationship as between different units, the facts and circumstances of each case had to be appreciated. On the basis of the specific facts in a particular case, after the conclusions have been drawn, the case law could be cited to support the conclusions; but such a matter which largely depends upon the facts and circumstances relevant to the issue, no decision could be arrived at only on the

basis of decisions in other cases with facts and circumstances specific to them.

7. After giving our careful consideration to the issues involved and the order recorded by the adjudicating authority, we consider it to be a fit case for remand.

8. With regard to the various decisions of different judicial forums, as cited by both the sides, regard could also be had to the following decisions among others to arrive at the correct decision -Super Engg. Works v. CCE, Pune, 1996 (82) E.L.T. 102 (T); where different units were acting in tandem, then the clubbing of clearances was justified.H.T. Bhavnani Chemicals (P) Ltd. v. CCE, Baroda, 1997 (92) E.L.T. 502 (T) - identity of interest amongst the units which were under the effective control and directions of common partners when established, then the units though separate were not to be treated as independent parties. In that case two common directors in reality owned, directed and controlled the production of all the units which served only as a facade to avail of the exemption. In such a situation, clubbing of the value of clearances of all the units was justified.Unique Resin Indus, v. CCE, 1993 (68) E.L.T. 230 (T) - four units were having common infrastructural facilities. They were financed and run by the same family. The Tribunal held that the units were not independent and that the value of clearances of all the four units was to be clubbed for the purposes of small-scale exemption.

9. In the light of our above discussion, we set aside the impugned order-in-original and remand the matter to the jurisdictional Commissioner of Central Excise for readjudication after providing an opportunity of hearing to both the sides and then pass a speaking appealable order, as per law.

The appeal filed by the Revenue is allowed by way of remand. Ordered accordingly.

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