

Binod Tekriwal Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-13-2000

Reported in : (2000)(121)ELT150Tri(Mum.)bai

Appellant : Binod Tekriwal

Respondent : Commissioner of Central Excise

Judgement :

1. When this matter was called, it was submitted by learned advocate, Shri S.P. Sheth, that the question in this appeal is relating to imposition of penalty on the sole proprietor of the firm and also on the firm and in this case as the application made by the firm under the Kar Vivad Samadhan Scheme has been accepted and the matter settled by an order passed by the designated authority, the Commissioner (Appeals) has deemed the appeal of the firm to be withdrawn and the matter settled in terms of the KVSS Scheme. Therefore the appeal of the sole proprietor Shri Binod Tekriwal should be considered and decided.

2. Shri Deepak Kumar, DR submitted that he has no objection to the main appeal being taken up and submitted that the penalty has not only been imposed on the sole proprietor of the firm which has settled under the KVSS Scheme but also showed the fact that Shri Tekriwal was acting for and on behalf of his wife and daughter who were shown as proprietors of certain other proprietary firms and who in their statements have admitted that they were proprietors of those firms only on paper and had nothing to do with excisable goods being manufactured by those firms. Shri Sheth in reply submitted that the penalty was proposed in the show

cause notice on Shri Tekriwal as proprietor of M/s. Binod Steel and there was no allegation regarding the activities of the role played by him for the other two firms in the name of his wife and daughter. He submitted that it is right law to submit that penalties on sole proprietary firm and the proprietor cannot be imposed separately for the same set of offence and material.

3. We find that there is no difference between the sole proprietor and the proprietary firm and the two constitute a single entity in the eyes of law and have treated as a single juristic person. When a penalty has been imposed on M/s. Binod Steel and the matter has been settled in KVSS the penalty imposed on its sole proprietor Shri Tekriwal cannot stand as it cannot be imposed and also it will be deemed to have been settled under the KVSS Scheme. Since even under the KVSS Scheme the separation of the two i.e. the sole proprietor and the proprietary firm cannot be effected.

4. We have considered the submissions of the learned DR and cannot find any reason to invoke the separate penalty on the sole proprietor of M/s. Binod Steel as we cannot lay between M/s. Binod Steel and Shri Tekriwal they being one entity. If penalty has been imposed on M/s.

Binod Steel and adequately settled under the law the separate penalty on Shri Tekriwal cannot be imposed for the reasons as arrived at in the impugned order. We also find that the Tribunal in the case of *Broadway Textiles Ltd. & Ors. v. CCE*, 1999 (35) RLT 729 had held that when the case against the main person is settled under the KVSS, penalty on others should be set aside. In this view of decision of the Tribunal, we uphold that the penalty could not have been imposed on Shri Tekriwal in any case. Therefore, in view of our findings the appeal is allowed.

The stay petition is disposed of.

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