

Special Prints Ltd. Vs. Commissioner of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-18-2000

Reported in : (2001)(128)ELT289Tri(Mum.)bai

Appellant : Special Prints Ltd.

Respondent : Commissioner of C. Ex. and Cus.

Judgement :

1. These seven applications relate to seven appeals against the same order passed by the Commissioner of Central Excise, Surat-I. These are therefore being decided in this common order.

2. M/s. Special Prints Ltd. processed fabrics for M/s. Garden Silk Mills Ltd. as well as for other persons. In a show cause notice it was alleged that relationship between these two Companies was not that of a Trader and the Processor but that these two Companies were related persons and therefore in terms of Section 4 (1)(a)(iii) of the Central Excise Act. The value of the processed fabrics cleared by M/s. Special Prints Ltd. should be determined in terms of the price at which the goods were sold by M/s. Garden Silk Mills Ltd. A number of grounds were enumerated in the show cause notice bringing out the relationship between these two companies. It was alleged that during the period April 1993 to March 1998, on this ground, duty amount to Rs. 21,37,51,202/- had been evaded. A separate transaction of Texturising Yarn also formed part of the show cause notice. M/s. Special Prints Ltd. had sent some POY for texturising to M/s. Garden Silk Mills on job work basis. On its receipt back M/s. Special Prints Ltd. had sold the same

texturised yarn back to M/s. Garden Silk Mills at a price much higher than on which assessment was made and duty paid, when the goods were cleared by M/s. Garden Silk Mills. On this ground, it was alleged that short levy amounting to Rs. 60,31,775.30 had occurred on account of M/s. Garden Silk Mills Ltd. The show cause notice also alleged liability to confiscation of some seized goods as also the plant, machinery etc. It also alleged liability to penalty of the two assessees, the persons in-charge thereof, some transporters and the owner of the truck in which the offending goods were transported. After hearing the concerned persons, the Commissioner passed orders confirming duty of Rs. 21,37,51,202/- against M/s. Special Prints Ltd. and of Rs. 60,31,775.30 against M/s. Garden Silk Mills Ltd. He imposed penalty of Rs. 14,05,60,888/- on M/s. Special Prints Ltd. and of Rs. 60,31,775.30 on M/s. Garden Silk Mills. He ordered the offending goods as well as land, building etc. confiscated, but permitted their redemption on payment of fine. He imposed a penalty of Rs. 5 lakhs on Shri B.J. Modi, Director of M/s. Special Prints Ltd. and of Rs. 2 lakhs on Shri S.J. Bhesania, Director of M/s. Garden Silk Mills Ltd. A penalty of Rs. 10 lakhs was imposed on the Truck owner and of Rs. 5 lakhs each on M/s. Garden Associates and M/s. Vareli Associates owners of the goods under seizure.

3. We have heard Shri J.F. Pochkhanwala, Sr. Counsel appearing along with Shri Willingdon Christian, Advocate for the applicants and Smt.

Reena Arya for the Revenue.

(i) S. Kumar Ltd. and Ors. v. CCE, Indore - [2000 (37) RLT 606 (CEGAT)]Prafful Industries Ltd. and Ors. v. CCE, Mumbai-I - [2000 (38) RLT 125 (CEGAT-L.B.)]Pawan Biscuits Co. (Pvt.) Ltd. v. Collector of Central Excise [2000 (120) E.L.T. 24 (S.C.)].

5. In the first two Judgments the issue involved was similar to the one posed before us today. In both cases the trader, who had sent fabrics for processing was related to the processer. In this situation also the Tribunal relied upon the Supreme Court Judgment in the case of Ujagar Prints judgment and set aside the demand for differential duty made on the ground of relationship. In the case of Pawan Biscuits Co. (Pvt.) Ltd., the Tribunal in their order [1991 (53) E.L.T. 595]

had held that M/s. Pawan Biscuits Co. Pvt. Ltd. were manufacturing Biscuits for Britannia Industries Ltd., the agreements were that of a principal and an agent and that there was no principal to principal relationship. In these circumstances the Tribunal held that for the purpose of assessment of the biscuits cleared by M/s. Pawan Biscuits Co. Pvt.

Ltd., should be valued at which these biscuits were sold by M/s.

Britannia. In the cited Judgment Supreme Court set aside this finding of the Tribunal and ruled that the situation was squarely covered by the cited Judgment in Ujagar Prints case. Shri J.F. Pochkhanwala submitted that the case of the applicant was squarely covered by these judgments.

6. Smt. Reena Arya submits that the Ujagar Prints Judgment would prevail so long as there was no existence of relationship between the trader and the processor. It is her submission that in the light of existence of the relationship between them these judgments would not apply. We find that in the cited judgments of the Tribunal the ratio of the Ujagar Prints Ltd. judgment was applied even in the face of the relationship. The Judgment in the case of Prafful Industries Ltd. is given by a three-Member Bench, the ratio of which is necessarily to be followed by a two-Member Bench.

7. Shri J.F. Pochkhanwala submits that even the existence of the relationship is not real. He recounts the various grounds given in the proceedings alleging relationship. The first ground is that there are common Directors in both the companies. A chart has been placed on record by the applicants which shows the names of the Directors in both units over the period covered in the show cause notice. We find that not a single name is common in both companies. It would appear that the promoters were common but that does not make these two units related persons in terms of Section 4 of the Central Excise Act, 1944. A number of instances have been cited in the show cause notice quoting from the balance sheet of the two Companies where-by mutuality of interest is sought to be proved. In fact the allegations run on the lines usually adopted for establishing commodity of small scale units. Where the units involved are corporate entities such grounds would not suffice to establish relationship in terms of the law. Some of the grounds

such as free supply of coal and development of designs by M/s. Garden Silk Mills for M/s. Special Prints Ltd. may make for valid grounds for loading the assessable value of the fabrics processed by M/s. Special Prints but would not become a ground establishing relationship. One of the grounds given is the sale of goodwill by M/s. Special Prints Ltd. to M/s. Garden Silk Mills Ltd. Counsel claimed that actually the goodwill was written off by M/s. Special Prints Ltd. and that there was no question of goodwill changing hands. On perusal of the state of evidence and the discussion made by the Commissioner, it is our prima facie finding that the existence of relationship between the two units is not established to the extent of invoking the clause in Section 4 of the Act. Since this was the main stay of the allegations and since two of the cited judgments make for application of the Ujagar Prints Ltd. judgment in the case of the established relationship also, we find that on this ground the assesseees have made a strong case for waiver.

8. The same logic would apply for the confirmation of duty for M/s.

Garden Silk Mills for the duty allegedly short levied on the yarn texturised.

9. We, therefore, grant waiver of the duties confirmed and the penalties imposed on the two appellant units and their persons incharge and stay recovery thereof. Since the liability to confiscation of the goods was alleged on the ground of underinvoicing we waive the pre-deposit of penalty by the two traders as well as by the transporters.

10. Shri Willingdon prays for the stay of collection of interest. We find this request premature. The Commissioner had ordered payment of interest on delayed payment on Central Excise duty evaded. Whether the duty was evaded or not is to be decided by the Tribunal at the time of final hearing. Therefore the question of charging interest or granting stay of such charge at this stage does not arise. Shri Willingdon submits that during the currency of the appeal proceedings the appellants should be permitted to utilise land, building etc. The prayer is allowed subject to the assesseees giving an undertaking to the Jurisdictional Commissioner to the effect that they will not sell, lease or otherwise part with the land, building etc. or any part thereof, during the pendency of the appeal.