

**Archana Industries Transformers Vs. Archana Industries Transformers**

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**SooperKanoon Citation :** [sooperkanoon.com/20946](http://sooperkanoon.com/20946)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-15-2001

**Reported in :** (2001)(137)ELT1390Tri(Mum.)bai

**Appellant :** Archana Industries Transformers

**Respondent :** Archana Industries Transformers

**Judgement :**

1. The two appeals by Archana Industrial Transformers P.Ltd.(hereinafter archana), and Vidarbha Transformers P.Ltd (hereinafter vidarbha), and the appeal by the Commissioner are against the common order of the Commissioner of Cental excise, Nagpur. In that order, the Commissioner has partly confirmed the proposal in the common notice issued to Archana, Vidarbha and Nippon Transformers P. Ltd (hereinafter Nippon). He has confirmed the duty of Rs. 17.30 lakhs demanded from Archana but dropped the demand for duty demanded from Nippon and imposed penalty on Archana and Vidarbha. Archana and Vidarbha have appealed against the part of the order demanding duty from them and imposing penalty.The Commissioner in his appeal challenges the dropping of the proceedings against Nippon.

2. Each of these three units had been licensed for manufacture of electric transformers. In May 1990, Vidarbha and Nippon applied for permission under rule 57F(2) to send out to Archana "transformer assembly without connection" for the purpose of "connection and dehydration in baking chambers" and return to them for completion of manufacture. The permission was granted. Notice was

subsequently issued to these persons following investigations by the department. The notice alleged that there was no manufacture taking place in either vidarbha or Nippon, the entire manufacture of transformers took place at the premises of Archana. The manufacture and clearances recorded by these two therefore should form part of the manufacture of Archana. By doing so, Archana was not entitled to the benefit of notification 175/86 for the years 1990 to 1993. Paragraph 7 of the show cause notice summarises the basis for the charge as follows.

"7 detailed scrutiny of the documents seized/withdrawn/produced from /by M/s. Archana, M/s. vidarbha, Nagpur and M/s. Nippon and enquiries/investigations made by the officials revealed that M/s.

Archana had suppressed the production of electric transformers and cleared the suppressed production of electric transformers in the name of SSI units namely (i) M/s. Vidarbha and ((ii) M/s. Nippon to avail the benefit of notification no. 175/86-CE and 1.3.86 as amended granting concessional rate of duty to the excisable goods i.e. electric transformers shown to be manufactured by the above SSI units though in actual practice no electric transformers were manufactured by these SSI units in order to evade the payment of Central Excise duty legally due there of M/s. Archana has floated above SSI unit for which they have financed the money for purchasing machinery, land and building and also supplied working capital to these SSI units. These SSI units are not fully and adequately equipped with machinery and equipments required for the manufacture of complete transformer. The machinery installed in these SSI units are capable of manufacturing only spares of the transformer. Most of the raw material procured in the name of these SSI units are stored and accounted for in the factory premises of noticee no.1 Further, certain components procured by these SSI units for the manufacture of transformers on which modvat credit was availed, along with spares of transformers assembled by these SSI units from the raw material supplied by notice no.1 has been despatched/removed by these SSI units to the factory of noticee no.1 for the manufacture of transformers. Most of the workers/employee of SSI units were actually working in the factory of noticee no.1 The various manufacturing/testing of electric transformers in the factory of noticee no. 1, which were not accounted for in their statutory records, but the same were shown as

manufactured and cleared by these SSI units. the details of which are discussed in the appropriate paras of the notice.

"From the investigation conducted, it appears that by the way of above modus operandi M/s. Archana have suppressed the production of 258 nos. of transformers totally valued at Rs.1,55,31,034.82 during the period June 90 to January 93 and 350 nos. of transformers totally valued at Rs. 1,26,01,384.16 during the period December 90 to January 93 manufactured in their factory and removed the same from their factory during the above period in the garb of their being manufacture and cleared by M/s. Vidarbha, Nagpur and M/s.

Nippon Nagpur, respectively floated by them at concessional rate of duty of 10% advl. by misutilising the provisions of notification no. 1755/86 CE dt. 1.3.86 as amended, instead of payment of duty of full rate i.e. 20% advl. as per tariff." 3. The evidence upon which these allegations are based is as follows. A visit by the officers to the factory of Archana and Nippon showed no manufacturing activity taking place. There was a general atmosphere of dust and neglect suggesting absence of any activity Only low tension and high tension winding machine were found in each of these premises.

The records relating to production of these two firms were kept in the premises of Archana. Three of the workers shown to have been employed in Vidarbha stated that they had actually been working in Archana, and not in Vidarbha. The security guard employed in Archana said that Vidarbha's factory had been closed for the past year, the transformer shown to have been made by Vidarbha and despatched to Archana were made in Archana and despatched in the name of Vidarbha.

4. On this evidence, the Commissioner has concluded that Vidarbha, Archana and Nippon were separate independent units. there was no manufacture of nay kind at Vidarbha, the manufacture attributed to it had been undertaken by Archana,. Since the Statements of the employees of Vidarbha and of the security guard of Archana only referred Vidarbha and did not make any mention of Nippon, he concluded that the case against Nippon was not established.

5. We will first consider the appeals of Archana and Vidarbha. The contentions of their common counsel are these. The manufacture of the transformers was undertaken in three stages. The winding of the primary and secondary coils (also referred to as high tension and low tension coils) around the core of the transformer took place at the premises of Vidarbha and Nippon. The resulting core assemblies were thereafter sent to Archana for dehydration in the baking chamber, and then returned to Vidarbha and Nippon where the necessary oil required for their operation was filled, the other operations required for completion of the transformers carried out, and the transformers tested. Therefore, in accordance with the permission granted under rule 57F(2) Vidarbha and Nippon were manufacturers. Vidarbha had twelve workers on its rolls. Three of these workers, whose statements are relied upon by the department, were working, whose statements are relied upon by the department, were working with Archana without remuneration in order to learn that part of the manufacture of transformers which was taking place at Archana. The statement of K.A. Bondre, factory manager of Archana recorded on 19.7.94 has explained this position. S.M. Deshmukh.

authorised signatory of Vidarbha and D.P. Paralkar, authorised signatory of Nippon in their statements had confirmed the manufacture of core assemblies at Vidarbha and Nippon respectively and their despatch to Archana for the remaining processes. The veracity of these statements is established by the fact of these records in these two units showing despatch of core assembly and receipt of the raw materials for their manufacture, as also the presence of quantities of raw material in their premises. A.S. Mondekar, managing director of Vidarbha and general manager of Archana had, in his statement dated 16.1.93, also confirmed sending of core assembly by Vidarbha to Archana. The fact of final manufacture of transformers at Vidarbha and Nippon is also confirmed by the fact that they were tested at these premises officials of the Maharashtra State Electricity Board, their purchaser. The movement of the core assemblies before and after their baking had taken place under challans issued in terms of permission granted under rule 57F(2). That permission has not so far been cancelled. Therefore, the Commissioner's view that the permission was obtained by misdeclaring the facts to the department cannot be accepted. Raghunath Mondal, the security guard at

Archana, had only commenced work there from 1.1 1993 onwards, a fortnight before his statement was recorded, and hence false. The presence at the premises Archana of the production record of Vidarbha and Nippon is explained by saying that that they were required there in order to sent the production reports to the common management situated at Calcutta.

6. The departmental representative largely relies upon the reasoning in the Commissioner's order.

7. It would be difficult to conclude that, considered on their own, the activities that archana and Vidarbha claim to have undertaken would amount to manufacture of electrical transformers. The core assemblies may no doubt be critical parts of transformers, but cannot by any means be said to have acquired the essential characteristics of transformers.

However, that is not the department's case. The department's case seems to be that no manufacturing activity of any kind took place at these two premises. Each of these parties had declared to the department the process which they said would be undertaken at each of these i.e. the core winding to be done at Vidarbha and Nippon and the remaining work at Archana, and the completion and testing and clearance at Vidarbha and Nippon.

8. Raghunath Mandal was the security guard employed at Archana. Counsel for Archana and Vidarbha has relied upon an affidavit affirmed by Samir Kumar Mandal, proprietor of Mandal Security Agency which employed Raghunath Mandal, to the effect that he commenced working with Archana from 1.1.93 Raghunath Mandal's statement was recorded on 16.1.93. The affidavit was relied upon in the reply to the show cause notice and the Commissioner has not dealt with it. He has not found the affidavit to be false or otherwise unworthy of credence. In that case, he would have to explain Mandal could depose upon events which had occurred in Vidarbha one year previously when, according to the record he was not anywhere there, or not rely upon his statement. He has not offered any such explanation. We therefore find do not find it prudent to act upon Mandal's statement.

9. It is also not correct to say that "most of the workers" were working with Archana. It is not disputed that three out of twelve workers were in fact working with Archana. That still leaves behind nine. It is not department's case that this number was insufficient to carry out the jobs at Vidarbha. The fact of the premises of Vidarbha being closed, and found to be dusty and showing other signs of disuse when the officers went there, does not by itself lead to the conclusion that it had not been functioning for a year. Such a state of affairs would equally fit in with the explanation offered by it, that it had been closed for about six months previously. The affidavits of the workers of Vidarbha saying that they had been working in the factory during the period when it is alleged to have been closed have not been rebutted by the Commissioner. If Vidarbha were in fact closed have not been rebutted by the Commissioner. If Vidarbha were in fact closed or at any rate, not using its machinery which was found installed for production, this could have been more clearly established by reference to other factors, such as the absence of electricity consumption or other methods; no such thing appears to have been attempted.

10. We agree that the statement dated 16.1.93 of Bondre lends support to the department's case. Bondre in that statement has said that Vidarbha was closed for a year and that occasionally, it used to do coil winding. As against this, the statements of Mondekar, Paralkar and Deshukh indicate that manufacturer of coil winding took place at Vidarbha during the period under consideration. The claim that testing of these transformers at the premises of Vidarbha as carried out by the representatives of the purchaser Maharashtra State Electricity Board has also not been rebutted by the Commissioner. The explanation for the presence of the production records of Vidarbha (and Nippon) at the premises of Archana, detailed in paragraph 5 above, is not far - fetched. There does seem to have been a relationship of some kind between Archana and Vidarbha. Mondekar was the managing director of Vidarbha and general manager of Archana. At any rate, the Commissioner has not rebutted the explanation, which was offered to him in reply to the notice.

11. We are of the opinion that the consideration of the evidence cannot justify the conclusion that the absence of manufacture at Vidarbha has been established to

the required degree of probability. We allow these appeals and set aside the impugned order.

12. We now turn to the department's appeal relating to Nippon. The grounds in this appeal are as follows. Modekar, Bondre and Paralkar have admitted that "component/inputs" were sent by Vidarbha and transformers were actually cleared from the factory of Archana. We have already remarked that it was not the department's case in the notice that complete transformers did not emerge from Vidarbha and Nippon.

This charge, that the core windings were sent for completion to Archana, which, we must emphasise, had been permitted by the department (and the permission still subsisting) under rule 57F(2) cannot now be held against these parties. It is contended that the Commissioner has not given any finding on the fact that the raw material was purchased by Archana. The answer of counsel for Nippon is that there was common purchase of raw material by Archana in order to obtain the resulting advantage of a lower price, and that supply of raw material to Nippon by Archana is reflected in the books of Archana and Nippon has to be accepted. This is what had been contended in the reply to the notice.

The contention that no job work charges were recovered from Nippon is contrary to what the notice itself says. Page 10 of the notice cites the flow of money between Archana and Nippon and relies on it to say that Archana had financially supported Nippon. The ground that the workers of Nippon were working at Archana is not found in the notice.

We therefore do not find sufficient ground in this appeal to interfere with the Commissioner's order.

13. Appeal E/1043 and 1044/96 allowed. Appeal E/2256/96 dismissed.

Consequential relief according to law.

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