Collector of Central Excise, Vs. M/S. Supreme Electrical

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-13-2001

Reported in : (2001)(131)ELT271TriDel

Appellant : Collector of Central Excise,

Respondent : M/S. Supreme Electrical

Judgement :

1. The brief facts of the case are that the factory premises of the respondent herein were visited by the Central Excise Officers on 29.7.89, on receipt of information that the unit was clandestinely manufacturing and removing excisable goods. Spot enquiry revealed that the respondent was the proprietory concern of Shri Mehta and was engaged in the manufacture of mix grinders under the brand names 'Maggi' and 'Soni'. It was noticed that the assessee was procuring Electric Motors exclusively from M/s. Magnetic Controls situated at Goregaon, Bombay which was a proprietory concern of Smt. Mehta, wife of Shri Mehta.M/s. Magnetic Controls was exclusively selling the Electric Motors to the respondent who in turn was selling the mid grinders to M/s. Swaraj Agencies, a trading proprietory concern with Smt. Swadesh Mehta, mother of Shri Mehta as sole-proprietre. Investigations revealed that Shri Mehta set up several companies engaged in trading. On the basis of the above enquiry, SCN was issued to several respondents, M/s.

Magnetic Controls and others proposing clubbing of aggregate value of clearances of all excisable goods effected by the respondent, proposing recovery of duty of

Rs.21,26,717.68 on all clubbed clearances and clandestine removals during the period 1986 to 1990 and proposing imposition of penalty. The adjudicating authority dropped the proceedings for the reasons inter-alia that there were no common partners or proprietors in most of the trading companies, there was no flow back of profits, no mutuality of interest and therefore, held that the clearances of M/s. Magnetic Controls could not be clubbed with those of the respondent. Hence this appeal by the Revenue.

2. We have heard Shri Ashok Kumar, Ld. DR and Shri V.R. Sethi, Ld.

Advocate.

3. We find that in the case of CCE vs Sompura Ceramics reported in 2001(42)RLT.399, the Tribunal has held that in the case of clubbing of clearances, appeal against one assessee without hearing the firms or units whose clearances were proposed to be clubbed with the respondents, is not maintainable. In that case, appeals against the firms whose clearances were proposed to be clubbed with the respondents, were dismissed as time barred. In the present case also, we find that the Revenue has filed the present appeal within the statutory period of limitation and subsequently the Revenue filed an appeal against M/s. Magnetic Controls which was dismissed as time barred. Since no appeal lies against the co-noticee, appeal by the Department against only one firm without hearing the other firms is not maintainable when the clearances of the units are proposed to be clubbed. Following the ratio of the Tribunal's decision cited supra, we hold that there is no ground to interfere with the impugned order and accordingly uphold the same and reject the appeal.