

Central Tool Room Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-12-1985

Reported in : (1985)(5)LC2088Tri(Delhi)

Appellant : Central Tool Room

Respondent : Collector of Central Excise

Judgement :

1. The appeal is directed against the order dated 21-8-84 of the Collector of Central Excise, Chandigarh. The appellant is a society registered under the Societies Registration Act, 1860. This institution was established by the Government of India, Ministry of Industries with the assistance of the funds provided by the Government of Federal Republic of Germany. The main objectives of the Society are : (ii) To increase the efficiency of small-scale industries in the Northern Region in light engineering and allied fields by providing support in the areas of design and production of tools, jigs and fixtures, consultancy services, design and assistance in production planning ; (iii) Training of tool makers for press tools, jigs and fixtures, dies and moulds ; (iv) Conducting short-term and long-term course for the representatives of small scale industries of the area; (v) To develop after research small and medium size tools conforming to the needs of the small-scale industries ; and (vi) To upgrade production technology in small-scale industries which will improve the quality of the components and bring down the total cost of production and also shall help to increase the rate of production in general and of small-scale industries in particular.

The appellant is maintaining a Tool Room to impart training to tool makers of press tools, etc. On 1-10-1982 the appellant wrote a letter to the Assistant Collector, Central Excise, Ludhiana, for clarification whether the special types of tools produced in the tool room be liable for Excise duty. The Central Excise authorities required the appellant to file a declaration under Notification No. 80/80-C.E. The appellant filed declarations for the years 1981-82 to 1982-84 before the Superintendent, Central Excise, Ludhiana. In the declarations the appellant claimed exemptions under Notification No. 80/80-C.E., dated 19-6-80. The tools cleared during each of the above years were below the exempted value limit of Rs. 7.50 lacs. The Revenue took the view that no exemption was available under the said Notification or any other Notification, for Government products and belonging to Government of India. The appellant was advised to obtain L-4 Licence and clear the goods on payment of appropriate duty.

2. The appellant submits that the society had made a capital investment on plant and machinery to the extent of Rs. 3,08,277/- and the rest of the machinery had been donated by the Government of Federal Republic of Germany.

3. A show cause notice was issued on 21-10-1983 alleging that the appellant had cleared goods falling under Tariff Item No. 51A during 1981-82 and 1982-83 valued at Rs. 2,34,450/- and Rs. 6,08,555.16P respectively without payment of Central Excise duty. It was also alleged that the appellant was not entitled to the exemption under Notification No. 80/80-C.E. as it was intended to apply only to small-scale units. The appellant's claim for exemption under Notification No. 167/71 was also not considered available as the appellant was producing the goods according to the specifications of various parties on a commercial basis. The appellant was called upon to show cause as to why duty amount of Rs. 1,32,773.30 should not be recovered and as to why penalty should not be imposed. The appellant in a reply repudiated the allegations. On 21-8-84 orders were passed holding that the appellant was not entitled to the benefit of Notification No. 80/80 as the Society was run by the Government of India under the charge of Ministry of Industries. The claim of the appellant for exemption under the second Notification No. 167/71 was also negated as the Central Tool Room was not a Technical or Research Institute and the production of the tools was not

during training, experiment and research, hence the appeal.

4. Smt. Archana Wadhwa, Advocate, appeared for the appellant and urged that the appellant Society was registered under the provisions of the Societies Registration Act, 1860. She stated that the Society is a jurisdic entity, entitled to sue and sued upon. She relied on the following rulings in support of her contentions : (i) AIR (37) 1950 Allahabad 480 (Ganga Sahai v. Bharat Bhan and Ors.).(Pamulapati Buchi Naidu College Committee, Nidubrolu and Ors. v. Government of Andhra Pradesh and Ors.).

(iii) AIR 1970 Patna 163 (V 57 C 26) (K.C. Thomas v. R.L. Gadeock and Anr.).

(iv) 1983 E.L.T. 155 (CEGAT) [Embarkation Headquarters (HAL) v, Collector of Customs, Bombay].

(v) 1984 (15) E.L.T. 544 (Hindustan Aeronautics Limited, Lucknow v. Collector of Customs, Bombay).

The learned Counsel for the appellant emphasised that the institution cannot be deemed to be Government of India and the benefit of Notification No. 80/80-C.E. dated 19-6-1980 would be attracted. She also submitted that the institution was not functioning on a commercial scale and that the goods sold were the products arising in the course of the educational and research work. As the excisable goods were produced in a technical and research institute in the course of the training, she said, the benefit of exemption under Notification No.167/71, dated 11-9-1971 would be applicable.

5. Shri K.D. Tayal, SDR, argued that this Society was financed by the Government of India and it was not a Corporation but only an Association of persons though for certain purposes it was recognised as a jurisdic entity. He submitted that the property of the Society shall be deemed to have vested in the Governing Body of the Society under Section 5 of the Societies Registration Act, and in this case this Society was sustained by the aid received from the Government of India and the Government of Federal Republic of Germany. He drew our attention to the distinction between a Corporation and a Society registered under the Societies

Registration Act and argued that this Society did not have a statutory character. According to him, since this Society was managed and governed by the Government of India it should not be considered as a Corporation. Regarding the applicability of Notification No. 167/71 he said that the goods were not the resultant products of any training imparted to the students. He relied on the following rulings in support of his contention :Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi (now Delhi Administration) and Anr.], (ii) AIR 1975 Supreme Court 1331 [(1) Civil Appeal No. 2137 of 1972 Sukhdev Singh and Ors. v, Bhagatram Sardur Singh Raghuvanshi and Anr.),(Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.).

(i) Whether the appellant is entitled to the benefit of Notification No. 80/80-CE, dated 19-6-1980? (ii) Whether the appellant can claim exemption under Notification No. 167/71, dated 11-9-1971 in respect of the goods produced 7. Notification No. 80/80, dated 19-6-80 exempts excisable goods of certain description cleared for home consumption in any financial year by or on behalf of a manufacturer from one or more factories. The appellant claims that the goods cleared during the years 1981-82 and 1982-83 would attract the benefit of this exemption notification, because the appellant is a small scale unit run by the Government of India Society under the charge of Ministry of Industry. In paragraph 7 of his order the Collector has observed that it cannot be said that the Government of India is a small scale manufacturer to which the provisions of Notification No. 83/83, dated 1-3-1983 would apply. In other words, the Collector has equated this institution to Government of India and as a consequence has denied relief to the appellant. The appellant has filed the certificate of registration dated 9-4-79 issued by the Registrar of Firms and Societies, Punjab, under the Societies Registration Act. The appellant has also produced the Memorandum of Association and Rules and Regulations. Among others we find that the objective for which the Society has been established is for conducting short-term and part time courses for representatives of small scale industries of the area. It also provides common service facilities for the manufacture of tools, jigs and fixtures, dies and moulds for small scale industries. The main objective is to increase the efficiency of small scale units in the Northern Region. The management of the

affairs of the Society is entrusted to a Governing Council consisting of the Development Commissioner, Department of Industrial Development, a representative each of Integrated Finance Department and the Ministry of Industry, representative of Punjab Government, Department of Industry, representative of Governments of Jammu and Kashmir, Himachal Pradesh and Haryana and Chandigarh Administration besides others. The Governing Council shall remain in office for a period of 3 years from the date of registration of the Society. The members of the Society are appointed by the Government of India and hold office for such period as may be prescribed by the Government. The President of the Society shall be nominated by the Government of India from among the members. The Society maintains a fund created with all moneys provided by the Central Government, fees and other charges received by the Society, moneys received by the Society was of grants, gifts, donations, benefactions, etc., and moneys received by the Society in any other manner or from any other sources. The Society can also borrow or raise moneys with the prior approval of the Government of India. It may acquire any land or building or any property movable or immovable with the prior approval of the Central Government. It is entitled to deal with the property belonging to the Society in any manner deemed fit for advancing the objectives of the Society with the prior approval of the Central Government. The Governing Council shall have the management of all the affairs and funds of the Society and shall have the authority to exercise all the powers of the Society subject to such limitations in respect of expenditure as the Government of India may from time to time impose. The Society can also enter into arrangement with the Government of India, State Governments and other Public and Private Organisations. The Accounts of the Society shall be audited annually by the Auditors appointed by the Government of India. The annual report of the Society shall be prepared by the Governing Council and placed before the Society in its Annual General Body meeting for approval.

8. The above provisions and also the Memorandum of Association amply indicate that this Society is an independent juristic entity entitled to administer its affairs including its finance. It is true that the Central Government provides a portion of the funds to achieve its objectives. But on that ground it cannot be held that this institution is Government itself.

9. In 1970 Patna 163 (V 57 C 26) cited (supra) by the learned Counsel for the appellant, the legal character of a Society registered under the Societies Registration Act (1860) came up for scrutiny. That was a case of a Sainik School Society registered under the Societies Registration Act, 1860 (Act 21 of 1860). The Principal of the Sainik School claimed that he was holding a civil post under the Union and was entitled to the protection of Article 311 of the Constitution. A question arose as to what was exactly the legal character of a Society registered under the Societies Registration Act, 1860. This decision refers to an earlier ruling of the Supreme Court reported in AIR 1962 Supreme Court 458 (V 49 C 71) [Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi v. State of Delhi (now Delhi Administration) and Anr.]. The members constituting the Sainik School Society were ex-officio holders of office in the Central Government or various State Governments. The Chief Ministers of various States besides the Defence Minister of the Centre had control over the management of the Society.

It was held that the control or management of the Society or its institutions was not to be left in the hands of any Government either the Central or of any one State. Their Lordships took the view following the earlier decisions that once a Society is registered under the Societies Registration Act, 1860 "the Society enjoys the status of a legal entity apart from its members constituting the same and is capable of suing or being sued". The Court observed that "the petitioner in the case, in no sense, can be said to be holding a civil post under the Union or a State". The ruling reported in AIR (37) 1950 Allahabad 480 (supra) also holds that a Society registered under the Societies Registration Act, 1860 is a legal person. (supra) confirms that view. The Tribunal has held in (supra) that M/s. Hindustan Aeronautics Ltd., though owned by the Government and its entire share capital is held by the President of India, is a Government company and not Government for the purpose of Section 27(1) (a) of the Customs Act, 1962. In (supra) which is a Government undertaking was held to be not Government per se in respect of refund claims.

10. The decisions cited by the learned S.D.R. were in regard to the statutory institutions qua societies registered under the Societies Registration Act, 1860. In (supra) it was held that before an institution can be a statutory body it must be

created by or under the statute and owe its existence to a statute. (supra) supports the view that provisions of the Societies Registration Act, do not show any intention to incorporate though they conferred certain privileges on the registered Society. Similarly, in AIR 1975 S.C. 1329 (Sabhajit Tewary v. Union of India and Ors.) the question arose whether the Council of Scientific and Industrial Research was really an agency of the Government. It was held that the Society did not have a statutory character like the Oil and Natural Gas Commission, Life Insurance Corporation or the Industrial Finance Corporation. That decision will not apply to the present case, because questions of infraction of Articles 14 and 12 of the Constitution were raised.

11. So both on consideration of Law as also on the present facts, it is manifest that the appellants institution cannot be considered to be "Government" and on that ground disentitled to the exemption under Notification No. 80/80-C.E. It is a small scale unit only and should be considered as such for the purpose of the aforesaid Notification.

12. The appellant also claimed that the goods manufactured in the course of the training would be entitled to full exemption under Notification No. 167/71, dated 11-9-1971. As already observed, that Notification exempts all excisable goods produced in a technical, educational and research institute in the course of training. We do not accept the contentions of the appellant on this ground, because the appellant-Tool Room provides consultancy services to engineering industry. It also provides facilities for design and manufacture of high quality precision tools. The scrutiny of their records show that the Unit has manufactured tools classifiable under T.I. No. 51-A according to the specifications of various parties on orders or advice on commercial basis. So the goods produced cannot be treated as goods manufactured in the course of imparting technical training. The appellant-institution is not also an educational or research institute.

Moreover, it is seen that the appellant-institution has not complied with the other requirements of the Notifications, namely, production of evidence as may be required by the Collector for verifying that the goods had been produced only in the course of training. The lower authorities have, therefore, rightly held that the

appellant-institution has not established that it is entitled to the benefit of these Notifications.

13. A cross-appeal has been filed by the appellant. The appellant has claimed in the grounds of appeal that jigs and fixtures, etc., manufactured by the institution would be covered under residuary Item 68 and not T.I. No. 51-A. But the appellant had not raised this ground before the lower authorities nor had they come forward with such a case in reply to the show cause notice. We, therefore, hold that the appellant-institution is not entitled to raise such a plea at this late stage.

14. For the reasons aforesaid the appeal is allowed and the cross-objections are disposed of in the light of the above observations.

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