

Aroma Apparels Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-02-1985

Reported in : (1986)(25)ELT90TriDel

Appellant : Aroma Apparels

Respondent : Collector of Central Excise

Judgement :

1. This is a revision application filed before the Government against the order of the Board dated 12-3-1980. On transfer it is being treated as an appeal.

3. The appellants are a small ready-made garments manufacturing unit having their factory and office in Room No.418, Hind Rajasthan Building, Bombay. Between 12 to 16th June, the Central Excise officers of Inspection Group, Bombay, visited the premises of M/s. Intima Wear, Room No.422, Hind Rajasthan Building, Bombay. The said inspection group found 30 pcs of ready-made garments of registered brand name, namely 'AROMA'. It is also alleged that they found some incriminating entries in the private accounts. The Department's case is that the appellants (M/s. Aroma Apparels and M/s. Intima Wear, though apparently two different legal entities, in actual practice, it was not so. The Department rely on certain circumstances and also entries in the accounts in support of their contention. According to them, this method was adopted with a view to gaining the benefit of the exemption accorded under Notification 150 of 71-CE dated 26-7-1971. During the course of the investigation, statements were recorded from Smt. L.P.Advani, proprietrix of M/s. Intima Wear and Shri S.H. Sahani, the Proprietor of

the appellants firm. On the basis of the investigation a show cause notice was issued on 12-12-1975 as to why Central Excise duty of Rs.82,196.60 should not be recovered and why penalty should not be imposed under Rule 173 Q of the Central Excise Rules, 1944. The appellants in reply to the show cause notice denied the charges. They stated that the Department has not adduced sufficient evidence to hold that M/s. Intima Wear was owned 'by the appellants. The appellants' unit has been in existence from 1966 while M/s. Intima Wear was started in 1968 or 1969, prior to the introduction of Central Excise duty on ready-made garments. The appellants had introduced Intima Wear, which was situated near their unit, to manufacturers of raw materials and others for purposes of convenience. Few instances of errors pointed out in the Invoices were merely clerical omissions. The appellants had nothing to do with M/s. Intima Wear. The Collector of Central Excise, Bombay, after enquiry imposed a penalty of Rs. 2,000 both on the appellants and M/s. Intima Wear. The appellants were directed to pay the duty of Rs.82,196.60. There was an appeal to the Central Board of Excise & Customs and the Collector's orders demanding the duty and penalty were confirmed.

4. Shri Subhedar, Advocate, appearing for the appellants urged that the appellants had nothing to do with M/s. Intima Wear. The appellants never exceeded the exemption limit provided under the notification 150 of 71. The bank transactions were verified and there was no payment by appellants to M/s. Intima Wear. The income-tax and sales-tax assessments for the firms were distinct and different. He urged that there was a withdrawal of duty on ready-made garments under Notification 86 of 76 dated 16-3-1976. There was no licensing control also. Hence there was no necessity for the appellants to create a bogus firm to cover their clearances. The two firms had separate bank accounts. Shri Subhedar stated that the authorities below have relied on certain surmises without appreciating them in the correct prospective. He relied on the ruling reported in 1981 ELT 59 (Rice & Oil Mills Partnership Firm, Kandassankadavu v. Deputy Superintendent of Central Excise, Trichur) wherein it was held that the term 'manufacturer' in the notification referred to a person- who manufactures and applied with greater appropriateness to a firm engaged in the manufacture than to the individual partners composing it. That was a case where the firms had common partners. In 1980 ELT 263 (Philips

India Ltd. and Others v. Union of India) it was held that a person being a Director of two companies was not indicative of the one company being dummy for the other. He also urged that the notice issued was also barred by time.

5. Shri K.D. Tayal, SDR, who appeared for the Department, drew our attention to the several entries in the accounts and also the circumstances pointed out by the lower authorities; He stated that the appellants were the main firm while M/s. Intima Wear was merely a shadow firm created for the purpose of securing the benefit of exemption. He relied on the ruling reported in 1983 ELT 1546 (Collector of Customs, Madras, and Others v. D. Bhoormull) and urged that the Department has established sufficient proof to make out their case and the burden has shifted on the appellants to prove the contrary.

6. We have carefully considered the contentions of both the parties.

The Department contends that M/s. Intima Wear is a dummy company and the appellants are the manufacturers for the purpose of excise levy. It is well settled that unless there is adequate proof that the other firm is a dummy concern or a camouflage for the real manufacturer, one cannot act on mere suspicion or surmise. It is in evidence that the appellants firm has been in existence from 1966. M/s. Intima Wear was started on 2-1-1970 and we have a certificate of the bank to the effect that the accounts were opened on 2-1-1970. The proprietor of M/s.

Intima Wear and the owner of the appellants' firm are not shown to be related in any way. The appellants have separate bank account. The trade mark certificate has been issued in the name of the appellants even in 1968. The appellants have entered into an agreement of lease on 1-4-1967. In respect of Intima Wear the Municipal Licence fee had been collected from Smt. Advani from 1969. The registration under the Shop and Establishment Act is dated 5-10-1968 in the name of Intima Wear.

The sales-tax assessment for the appellants is distinct from the assessment for M/s. Intima Wear. The income-tax assessment. in the name of Smt. Advani has also been filed. These factors unimpeachably point out that the two firms are two distinct legal entities with nothing in common.

7. The Department's contention is that the appellants somehow desired to get the benefit of notification 150 of 71. But we find that these two firms have been started long before the notification. The income-tax assessment relating to Smt. Advani shows that even during 1970, she was carrying on business in ready-made garments. The possibility of creating a dummy concern in order to secure the exemption limit does not stand scrutiny.

8. The show cause notice enumerated several circumstances to hold that Intima Wear was not an independent concern. The sheet-anchor of the department's case is the recovery of 30 pcs. of 'Arorna garments' in the premises of Intima Wear. Admittedly, the two premises are situated apart. The proprie-toris of Intirna Wear who was away at Bombay has stated that she was not aware as to how these 30 pcs. got into her premises. The statement of the employees have not been recorded to show that the appellants had transferred these identical garments. The presence of labels of Aroma will not conclusively show that the appellants have created the other concern. In any event, the presence of the garments manufactured by the appellants in Intima Wear cannot be treated as a circumstance against the appellants, as such garments are available in the open market. M/s. Intima Wear has not been hired by the appellants to carry on their manufacture. Shri Subhedar rightly pointed out that the value of the goods was also not very significant.

9. We must point out that both these firms have been under the Central Excise control from 1971 to March 1976 when the commodity was fully exempted. During this period, these units have admittedly dealt with ready-made garments. The units have been regularly checked, being under the exempted category. The documents checked have not been filed nor has there been any report suspecting evasion of duty.

10. The Credit Note No.231 of 75 has been issued by one Shri Mansukhlal and Company jointly in the names of both these firms. Smt. Advani and Shri Sahani have explained that it was due to a mistake. The Department has brushed aside their explanation. But it is significant to note that Mansukhlal has not been examined to show under what circumstance the credit note came to be issued in...

be prepared on the above lines. The department has not made out from the entries of the accounts to show that both the firms were having common transactions. The Challan 2031 has been issued in favour of Intima Wear c/o Aroma. Smt. Advani has explained that the suppliers knew Aroma better and hence the challan was so issued. The person who issued the challan was not examined to repel this explanation.

11. Yet another circumstance relied on by the department is the payment of labour charges only by M/s. Daswani Traders to Intima Wear. Even assuming it to be true, the appellants cannot be held as the manufacturer of those garments.

12. There was a purchase bill 4268 issued by Ram Chand & Co. in favour of Intima Wear but the amount was actually paid by the appellants." Smt. Advani was not aware of this transaction. But Shri Sahani has explained that the goods sent under the bill were refused by Intima Wear and were accepted by Aroma. In this case also, Ram Chand was not examined to rebut this explanation.

13. Emphasis has been laid on invoice No.472 issued by the Transport Company. It is urged that the entries in the ledger showed that the amount was actually paid by Intima Wear though the invoice stood in the name of the appellants. But this circumstance has been sufficiently explained by the appellants that the transport company had by mistake shown the appellants in the invoice and they have clarified it by their reply to the letter dated 8-4-1977. The department has also acted on a comparative statement of raw materials and electricity consumption to arrive at a finding that M/s. Intima Wear could not have manufactured 5744 pcs. without the supply of raw-material by Aroma. We have the statement of Smt. Advani that buttons, polythene bags, wooden cases, card-board boxes, etc., required in their manufacture, have been purchased by them. There are entries in the ledger to support this version. The calculation based on the consumption of electric power would be unreliable because one cannot presume that 6 pcs. of full size shirts per unit of power consumed can be manufactured. There is no scientific or technical support for such an assumption. Further the power consumption is also due to working of electrical fans, lights, iron, etc. The appellants submitted that the excise staff were aware of heavy leakage of power. The authorities

concerned have not pointed out at any previous stage that M/s. Intima Wear were a dummy concern.

14. A close reading of the orders of the authorities below show that they have acted on broad inferences rather than proved facts. There is no clear cut evidence by way of records, unimpeachable continuous conduct or irrefutable statements of suppliers of raw-materials and such other clinching circumstances to conclude that these two firms are not distinct entities as such, but merely creations or camouflage to get over the provisions of law.

15. Further Shri Sahani rightly pointed out that the Department cannot rely on Rule 10A as Rule 10 alone would be applicable and during that period the time limit was three months/1 year. The department had verified the details and for 4 years, it allowed the benefit of exemption. When the department knew the details of the production, it is futile to contend that there was any mis-declaration or suppression by the appellants. We do not accept the contention' of the department that the time bar would not be attracted.

16. Taking the entire circumstances into account, we are of the view that the impugned order cannot be sustained and the probabilities are more in favour of the appellants than against them. In the result, the impugned order is set aside and the appeal is allowed.

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