Commissioner of Central Excise, Vs. M/S. Mehta Cold Forge and Orthers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-23-2001

Reported in : (2001)(76)ECC549

Appellant : Commissioner of Central Excise,

Respondent : M/S. Mehta Cold Forge and Orthers

Judgement :

1. The brief facts of the case are that M/s. Mehta Cold Forge, Nasik and M/s. Nasik Industrial Engineering Corporation, Nasik were engaged in the manufacture of excisable goods falling under TI-52 and 68 of the Schedule to the erstwhile Central Excise Tariff. They were availing exemption from payment of duty during the period 1983-84 to 1985-86 in terms of Notification 80-80-CE dated 19.6.80 as amended, by showing that they are two separate and distinct manufacturing units. The Department was of the view that for all practical purposes, both units were working as a single unit inasmuch as both were using factory premises of each other and had installed their machinery in each other's factory premises and had been using the same for the production of goods without charging rent from each other for use of machinery.

They had also utilised the services of the supervisory and office staff and workers of each other without paying any additional remuneration.

Further raw materials were supplied by one unit to another without issue of sale vouchers, and semi-finished goods were also removed from the premises of one factory to the premises of the other. Scrutiny of records revealed that partners of both units had close functional interests in each other's business. Statements of various partners were recorded. From the investigations, it appeared to the Department that there was mutuality of interest between two units in the business of each other and that their separate existence was apparently for the purpose of availing the benefit of exemp.tion from duty under SSI exemption Notifications during the relevant period and that the units in question were not entitled to separate exemption. It, therefore appeared that the units had evaded payment of duty of Rs.20,88,498/-.

In these circumstances, a show cause notice was issued to M/s. Mehta Cold Forge and M/s. Nasik Industrial Engineering Corporation and others for the recovery of the above mentioned duty amount and for imposition of penalty. The case was adjudicated by the Commissioner who confirmed the duty demand and imposed penalties on the partners; an appeal was filed by the aggrieved persons before the Western Regional Bench of the Tribunal at Bombay; the Order-in-Original was set aside and the matter remanded for fresh decision in accordance with law. Vide the impugned order-in-original, the Collector has held that one unit started functioning form 1958 itself and the other unit in 1970/71 well before the coming into force of the respective SSI exemption Notifications and, therefore, it cannot be said that the second unit was created only for the purpose of ineligible availment of benefit of exemption. He also held that there was no flow back of profit and hence no mutuality of interest between the two units. The demand was dropped both on merits as well as on the ground of limitation. Hence theses appeals by the Revenue.

2. We have heard Shri M.P. Singh, learned DR and Shri Rajesh Kumar, learned Advocate and perused the records.

3. We find that in thecae 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 cases also, we find that the Revenue has filed the present appeals within the statutory period of limitation and subsequently the Revenue filed appeals against M/s.

Mehta Cold Forge (this is and obvious mistake since the appeals of the Revenue against M/s. Mehta Cold Forge was filed in 1993 itself within the statutory period of limitation - the Revenue should have filed the supplementary appeals against other co-noticees to whom the show cause notice was issued i.e. partners of M/s, Mehta Cold Forge and M/s. Nasik Industrial Engineering Corporation) which have been dismissed as time barred vide Miscellaneous Order No. 32/043. dated 23.4.2001. Since no appeal lies against the co-noticees, appeal filed 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 appeals.