

**Mentha and Allied Products Vs. Collector of Central Excise**

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

**Decided On :** Aug-05-1985

**Reported in :** (1985)(5)LC1894Tri(Delhi)

**Appellant :** Mentha and Allied Products

**Respondent :** Collector of Central Excise

**Judgement :**

1. As per the information supplied by the appellants a Mentha Oil Distillation Unit was established during the year 1972-73 under the sole proprietorship of Shri N.L. Nanda for manufacturing Mentha Oil from herb called Mentha Arvensis under the name and (style 'Mentha & Allied Products'. In the year 1974-75 this sole proprietorship business was converted into a partnership business with Shri N. L. Nanda and Shri Subhash Chandra as the partners. During the year 1975-76 with effect from 1.1.1976, three more partners were added to the said partnership business, namely, Shri Arvind. Kumar, Shri Anand Kumar and Shri Vijay Kumar Verma and a partnership deed was executed on 1.1.1976.

This partnership continued upto 31st March, 1978 and on that date .

Shri Subhash Chandra retired from the partnership business and a deed of dissolution dated 3rd April, 1978 was duly executed and thereafter a partnership deed was executed on 4th April, 1978 between the remaining four partners. In terms of the said dissolution deed all the assets and liabilities of the firm had been taken over by the remaining four partners and the name of the firm 'Mentha &

Allied Products' remained the same with its head office at Civil Lines, Rampur (U.P.). The said firm Mentha & Allied Products was dissolved on 31-3-1980 and a deed of dissolution was executed. Unit No. I at Sambhal was taken over by Shri N.L. Nanda and Shri V.K. Verma, whereas Unit No. II, at Chamrauwa was taken over by Shri Arvind Kumar and Shri Anand Kumar.

2. Record shows that the department booked a case against the appellants that they had manufactured Mentha Oil which is dutiable under Tariff Item 68 of the CET without applying for a central excise licence, without observing the formalities of the central excise law and without payment of duty leviable on the goods. Show cause notice was issued to the appellants demanding duty amounting to Rs. 3,43,410.06 for clearances effected by them during the period 1.3.1975 to 26.8.1979 and proposing to impose penalty for contravention of the provisions of the central excise law. The Collector, Customs & Central Excise, Meerut, by his Order-in-Original No. 5/82, dated 12th March, 1982 ordered M/s. Mentha & Allied Products (the appellants) to pay duty of Rs. 3,43,410.06 as demanded in the show cause notice under Rule 9(2) of the Central Excise Rules and a personal penalty of Rs. 10 lakhs was also imposed on them.

(2a). Aggrieved, the appellants filed an appeal before the Central Board of Excise & Customs, New Delhi who by its Order No. 216B of 1982 dated 20.7.1982 modified the order of the Collector in several respects and also reduced the penalty imposed from Rs. 10 lakhs to Rs. 2 lakhs.

3. Not satisfied, the appellants M/s. Mentha Allied Products, through its partner Shri N.L. Nanda filed an appeal before this Tribunal.

4. During the course of hearing of this appeal, the departmental representative raised a preliminary objection that the appellants M/s.

Mentha & Allied Products, which is a dissolved partnership firm has no locus standi to file this appeal before this Tribunal and hence the same be rejected as not maintainable.

5. We have heard Shri A.N. Haksar, Advocate along with Shri D.N. Kohli, Consultant for the appellants and Mrs. V. Zutshi, SDR for the department on this preliminary objection and have also gone through the record.

6. Shri Haksar, the learned counsel for the appellants drew our attention towards the provisions of Section 47 of the Partnership Act, which reads as under : "After the dissolution of a firm the authority of each partner to bind the firm and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise." According to him, the appellants are the aggrieved party and these proceedings are in the nature of winding up proceedings and therefore, the appeal on their behalf duly signed by one of the partners is maintainable under Section 35B of the Central Excises and Salt Act, 1944. The orders of the authorities below are against the appellants and the proceedings were started against the appellants after the dissolution of the original firm and now the department cannot raise this objection that the appellants against whom the order of adjudication was passed, even after dissolution, is not competent to challenge that order by filing this appeal. He cited a decision of the Madhya Pradesh High Court in the case of Ghanshyamdas Chhotalal v. Sales Tax Officer reported in AIR 1964 M.P. 161 in support of his contention. Though he cited some other decisions of Rajasthan High Court reported in AIR 1966 Rajasthan 187, AIR 1973 Rajasthan 39, AIR 1974 S.C. 1094 and another decision of the Madhya Pradesh High Court reported in AIR 1978 (Notes on cases) 218 in support of his contention but he mainly relied upon the decision given by the Hon'ble Madhya Pradesh High Court in the case of Ghanshyamdas Chhotalal (supra), the facts of which are applicable to the present case on all fours.

Referring to the decision of the Hon'ble Madhya Pradesh High Court, Shri Haksar argued that under the Act it is the firm that is assessed to tax and not any of its partners in their individual capacity. The liability of the firm to assessment to tax in respect of the transactions effected by it while it was in existence does not disappear after its dissolution. The liability of the firm to pay tax under the Act had arisen during the very period of its existence and therefore, in view of the

provisions of Section 47 of the Partnership Act after dissolution of the firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continued notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution. He pointed out that the effect of this provision is that for the purpose of winding up, the partnership is deemed to continue. According to him, the combined effect of Sections 47 and 49 of the Partnership Act is that though a partnership is dissolved it is deemed to continue for the purpose of winding up its business and discharge of partnership debts.

7. Mrs. Zutshi countered the argument of Shri Haksar and cited certain decisions under the Income-tax Act reported in 104 ITR (1976) 1302 Allahabad, AIR 1952 Bombay 337 and AIR1973 Calcutta 78, but all these decisions cited by Mrs. Zutshi are not at all relevant for deciding the point at issue before us. The facts in those cases were altogether different and even the ratio of those cases cannot be made applicable for the decision of this particular point before us.

8. The most relevant decision for the purpose of the determination of the point before us is that of the Hon'ble Madhya Pradesh High Court in the case of Ghanshyamdas Chhotalal (AIR 1964 MP 161) and the provisions of Section 47 of the Partnership Act. There is no dispute that the liability created against the appellants by the department is for the period during which the partnership was in existence. If the assessment is not made and the tax amount is not determined before the dissolution of the firm, the liability to pay tax does not disappear. It continues to exist and can be quantified by making an assessment and determining the tax amount in winding up proceedings. Under Section 47 of the Partnership Act after the dissolution of a firm the authority of each partner to bind the firm and the other mutual rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of dissolution. For the purpose of winding up, the partnership is deemed to continue.

9. Admittedly, the department had adjudicated and confirmed the demand of duty and also imposed penalty against the appellants after its dissolution. Appeal is a

continuing proceeding and therefore,we find no force in the contention of the learned departmental representative that this appeal filed in the name of the dissolved firm by Shri N.L. Nanda, one of the partners of Mentha Allied Products is not maintainable. The appellant firm after dissolution has not started or initiated any new proceedings. They are contesting the adjudication proceeding against the firm initiated by the department even after the dissolution of the partnership firm. Appeal being a continuing proceeding is maintainable in' this manner. We overrule the objection raised by. the department on this point.

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