

Commissioner of Central Excise Vs. Swastik Engineering Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-18-2001

Appellant : Commissioner of Central Excise

Respondent : Swastik Engineering Works

Judgement :

1. Swastik Engineering Works, the respondent to this appeal was engaged in the manufacture of domestic electrical flour mills. It sold its entire production to Swastik Sales Corporation and Pooja Sales Corporation. It alleged that these two firms were related to the manufacturer by reason of the following facts. The directors of these two firms were either directors of the Swastik Engineering Works or close relatives of these directors. These two buyers were prohibited from dealing with domestic flour mills manufactured by anyone else.

Each of them had to deposit Rs. 1.25 lakhs with the manufacturer. This sum was inordinate representing two months working capacity of the manufacturer. The price at which these two firms could sell these products was determined by the manufacturer. They described in the correspondence of the manufacturer as agents. The notice therefore proposed to base the value for assessment of these goods, by application of the provisions of the 3rd clause of the proviso under Section 4(1)(a) of the Act, on the price at which these two firms sold the goods to its buyers. Adjudicating on the notice the Asst.

Commissioner confirmed the proposal and also imposed penalty on the manufacturer. The Collector (Appeals) allowed the against that order and set aside

the Asst. Collector's order. Hence this appeal by the Collector.

2. We have heard the departmental representative. Respondent is absent and unrepresented despite notice.

3. The order of the Collector (appeals) does not deal with any of the grounds which the notice cited. He says that the appellant produced before him income tax and sales tax returns and balance sheet of the three firms and from this he has concluded that each of them has a legal entity. He further says that the manufacturer and the other firm do not have interest in each other's business. The notice had cited number of facts including close relationship of directors etc. in support of its contention. The Collector was required to consider these points and thereafter decide whether they were acceptable or not. Since his order is passed without considering these facts it is not a speaking order and cannot be upheld.4. The appeal is accordingly allowed. Impugned order set aside. The Commissioner shall decide on the appeal in accordance with law and pass a clear reasoned order.

5. The department's appeal was filed in 1986 against the order of the Collector (Appeals) passed that year in which he disposed of the appeal of the Asst. Collector's order passed in 1981. It is our endeavour wherever possible, particularly in long pending cases to attempt to dispose of the appeal on merits to avoid remand. We are unable to do so in the case before us. The department's appeal does not contain the show cause notice, reply of the respondent or other material which would enable us to go into the matter at length, as we would be required to do in order to dispose of the appeal on merits. Despite having been given opportunity the appellate Commissioner has not produced before us through the departmental representative evidence in support of relationship and other such matters. We are therefore left with no option but to pass this order in order not to further delay the issue.

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