

ispl Inds. Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-22-2001

Reported in : (2002)(145)ELT121Tri(Mum.)bai

Appellant : ispl Inds. Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. These 7 appeals have common facts and arise out of the same order.

They are therefore being disposed of vide this common order.

2. M/s. ISPL Inds. Ltd. manufactured excisable goods from their factory in Thane. This activity was stopped in 1983. M/s. Uchit Investments & Traders P. Ltd. was a factory which came in existence in 1982. M/s.

Vishrut Investments & Traders Pvt. Ltd. was a factory which came in existence in 1984. Excisable goods were not manufactured by M/s. ISPL Inds. Ltd. but by M/s. Vishrut and Uchit. There were no formal agreements entered into, but that the goods were got manufactured on job work basis. The raw materials were supplied by M/s. ISPL Inds. Ltd. and the goods were despatched to M/s. ISPL Inds. Ltd. or to their customers. The two job workers, M/s. Vishrut Investments & Traders Pvt.

Ltd. and M/s. Uchit Investments & Traders Pvt. Ltd. had their own registrations under the Central Excise law as well as under other laws such as Shop and Establishment Act etc. These two units filed declarations from time to time and

availed concessional rates of duty in terms of the exemptions available to units in small sector.

3. Show cause notice issued on 14-5-1990 alleged that M/s. ISPL themselves were the manufacturers. It was alleged that the creation of M/s. Vishrut and M/s. Uchit and their separate existence were myths.

The liability to duty was fastened upon M/s. ISPL. It was alleged that M/s. Vishrut and M/s. Uchit were not job workers but were hired labour.

In this belief demand of Rs. 71, 74,842.28 from was raised on M/s.

ISPL. The Modvat credit availed of by M/s. Vishrut and M/s. Uchit was sought to be reversed. Allegations as to penalty were made against the three units as well as against four individuals. They were Niranjana Shah, Managing Director of M/s. ISPL Inds. Ltd., M.B. Joshi, Assistant Manager of M/s. ISPL, B.U. Desai, Manager of M/s. Vishrut Investment & Traders and S.S. Shah, Managing Director of M/s. Vishrut Investment & Traders Pvt. Ltd. as also of M/s. Uchit Investment & Traders Pvt. Ltd. The Commissioner after hearing the concerned persons confirmed the demand, directed recovery of Modvat credit without specifying the quantum thereof and imposed penalties on all the seven no-ticees. Hence the present appeals.

4. We have heard Shri L.B. Attar appearing for all the appellants and Shri T.D. Bodade was the Revenue.

5. The issue for consideration in this batch of appeals is whether M/s.

Vishrut Investment & Traders Pvt. Ltd. and M/s. Uchit Investment & Traders Pvt. Ltd. were the job workers and thus liable to pay duty on the goods manufactured by them, or whether they were hired labour of M/s. ISPL, making M/s. ISPL the manufacturer in terms of 2(f) of the Central Excise Act, 1944. The grounds on which the allegations were made and sustained are given in paragraph 3.0.0. of the show cause notice. The salient grounds are that M/s. ISPL were advising the M/s.

Vishrut and Uchit as to what value was to be declared for payment of duty, that the production program of both units was planned by M/s.

ISPL, that the costs of damaged/rejected materials was borne by M/s.

ISPL, that the two units were manufacturing solely on behalf of ISPL, that the tax was deducted at source from the job payment charges, that the bank guarantees were issued by ISPL, that substantial funding was done by M/s. ISPL to the two units, and that ex-employees of M/s. ISPL were the persons-in-charge of the two units.

6. On these grounds it was claimed that the relationship was not on the principal to principal basis. These various charges were repeated by the Commissioner in paragraph 5 in page 5 of his order and were thereafter dealt with. On the basis of the charges the Commissioner upheld the allegations made in the show cause notice. It was pleaded before him that the department was approached by both the units for fixation of the assessable value and that the department had directed them to compute the same on the basis of cost + profit. On this ground limitation was pleaded. The Commissioner dismissed this plea on observing that the entire activity of the two units in filing price list etc. was part of a well thought out scheme to evade duty and therefore the extended period would apply.

7. In holding that M/s. ISPL were the manufacturers and the other two were hired labour, he relied upon the judgments in the case of *Basant Industries v. Collector of Central Excise, Kanpur* - 1995 (75) E.L.T. 21 (S.C.) as well as of *Shree Agencies* [1997 (1) E.L.T. J168 (S.C.)] in the face of the citation of the Supreme Court order in the case of *Ujagar Prints Pvt. Ltd.* Before us both sides presented case law to justify their stand.

8. Before the Commissioner the plea was made that the cost of defective goods had to be borne by the job workers but where the goods after being tested, were supplied to buyers and when they were returned as defective, the cost was borne by M/s. ISPL. The Commissioner did not go into this difference at all.

9. As regards the funding of the two units by M/s. ISPL the claim was made before the Commissioner that no money was ever advanced to M/s.

Uchit Investment & Traders Pvt. Ltd. for starting the unit. It was claimed the money given for time to time was adjusted towards job work charges. As far as M/s. Vishrut Investment & Traders Pvt. Ltd. is concerned the claim is made that M/s. ISPL owed them substantial sums for long periods. These arguments were also not dealt with by the Id.Commissioner.

10. As regards allegation that M/s. ISPL were exercising control over the manufacturing activity it has come out to the statement of Shri Parikh that the manufacture was done under his direct supervision and that M/s. ISPL had no control thereupon. The Commissioner has not dealt with this claim.

11. We find that the issues as are covered in the present batch of appeals had arisen in a number of cases. In the case before the Bombay High Court *Asha Pavro Electronics Pvt. Ltd. v. Union of India and Ors.*

[1987 (31) E.L.T. 661], the customer was supplying components of radios the brand name was of the supplier Bank, Guarantees were given and revalidated at the instance of the customers, quality control supervision was exercised and funds were advanced. In the presence of these circumstances; the allegations were made that the customer was the manufacturer and that the benefit of the notification was not available to the job worker. The High Court did not accept this proposition and held the job workers as the manufacturer.

12. In the case of *Super Printers v. Collector of Central Excise* [1987 (30) E.L.T. 745 (Tribunal)], in addition to the factors which were present in the case of *Asha Pavro Electronics Pvt. Ltd.* case (supra), the principal manufacturers had lent the machinery also to the job workers. Even then the Tribunal held that the processor was the actual manufacturer. In the present case machinery is owned by the job workers. In the case of *O.R.G. Systems v. Collector of Central Excise, Vadodara* [1994 (73) E.L.T. 450 (Tribunal)] on similar ground the job workers were held to be manufacturers.

13. The Gujarat High Court in their judgment in the case of Prolite Engineering Co. v. Union of India [1995 (75) E.L.T. 257] had held the job workers to be manufacturer where the raw materials were received from the Principal manufacturers, where the machinery, labour and capital belonged to the job work and when there was no management control over the job workers. This judgment applies squarely to the facts before us.

14. The Commissioner has relied upon the Tribunal judgment in the case of Pawan Biscuit Company (P) Ltd. v. Collector of Central Excise [1991 (53) E.L.T. 595 (Tribunal)] which dealt with the aspect of valuation where the goods were manufactured by the job worker. Apart from this fact that it does not cover the issues before us, but covers issues arising therefrom, and also from the fact that the said judgment was not approved by the Supreme Court [2000 (120) E.L.T. 24 (S.C.)] we need not dwell thereupon.

15. Thus on perusal of the judgments which cover inter alia the various grounds on which the allegations were made we find that the job workers namely M/s. Vishrut Investment & Traders Pvt. Ltd. and M/s. Uchit Investment Traders Pvt. Ltd. were the manufacturers in terms of the Central Excise Act, 1944. Therefore M/s. ISPL could not be called as a deemed manufacturer and the liability to pay duty would not be fastened upon them. Since the quantum of duty paid by M/s. Vishrut Investment & Traders Pvt. Ltd. and M/s. Uchit Investment & Traders Pvt. Ltd. is not in question in the proceedings, we need not go into the subsidiary issues.

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