

**Meta Pack Vs. Collector of Central Excise**

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

**Decided On :** Mar-15-2002

**Reported in :** (2003)(161)ELT1052TriDel

**Judge :** S Kang, a T V.K.

**Appellant :** Meta Pack

**Respondent :** Collector of Central Excise

**Judgement :**

1. These are three appeals arising out of a Common Adjudication Order dated 11-3-91 passed by Collector, Central Excise and as such are being disposed of by one Common Order.

2.1 Briefly stated facts are that both the Appellants M/s. Meta Craft and Meta Pack manufacture metal containers and consists of following partners :- (i) M/s. Meta Craft (a) Shri A.J. Shetty (b) Shri Vijay Shetty (ii) M/s. Meta Pack (a) Mrs J.J. Shetty (b) Shri Vinay Shetty 2.2. The Central Excise Officers visited the factory premises of Meta Craft on 22-7-89 and found papers/documents pertaining to M/s. Meta Pack; the officers also noticed shortage in stock of metal containers in Meta Pack which were cleared to their godown without payment of duty and found unaccounted stock in the premises of Meta Craft.

Investigation conducted by the Officers revealed that all the partners were related to each other and A.J. Shetty held power-of-attorney of all the partners; that both

the units rendered financial assistance to each other; they had common workers and did not have sufficient machinery to manufacture metal containers. The Collector, Central Excise, under the impugned Order, confirmed the demand of excise duty amounting to Rs. 6,85,302.34p against Meta Craft, imposed penalty of Rs. 3 lakhs each on Meta Craft and Meta Pack, imposed penalty of Rs. 1 lakh each on A.J. Shetty and Vijay Shetty, ordered confiscation of 28240 metal containers cleared to Godown and metal containers 32,640 found unaccounted and directed Meta Pack to pay Rs. 1 Lakh and also confiscated land, building etc. of both the units with option to redeem the same on payment of fine of Rs. 1,00,000/- each, holding that both the units are one and the same; that all the work of Meta Pack was done in Meta Craft only; there had been financial transaction between the two companies so as to keep both units viable; raw material received by Meta Pack were sent to Meta Craft and the metal containers manufactured out of such raw materials were cleared to the customers from the factory of Meta Craft without accounting and without payment of excise duty that though 57 F(2) Challans issued by Meta Pack showed welding and cutting to be done, the entire process was done in the premises of Meta Craft; services of Shri K.S. Hule, Accountant, and Shri Suresh Salien were utilised in both units and also of the other workers. The Collector relied upon the decision in Juggilal Kamlatpat v. C./T., AIR 1969 S.C. 932 wherein it was held that the Corporate Veil can be ripped open in the case the benefit goes to same persons. The Collector also gave his findings that the affidavits filed by them controverting their earlier statement were after thought and reference was made to the decision in Sukar Narain v. C.C., 3. Shri L.P. Asthana, learned Advocate, submitted that both Meta Craft and Meta Pack have separate SSI Registration, Income-tax Number, Sales Tax Registration, Excise Licence, Import/Export Licence, Power connection, telephone connection, separate premises, staff and separate registration with registrar of firms; that unfinished side seam welded tins were sent by Meta Craft to Meta Pack for printing, lacquering rubber solutioning, etc., after obtaining prior permission under Rule 57F(2); that later on Mera Pack also started manufacturing side seam welded tins from 1988 and unfinished goods were removed under Rule 57F(2) to Meta Craft for welding and other unfinished goods were sent for setting of sheets, seaming of tins etc. The learned Advocate, further submitted that the payments

made to each other unit was for the job work done which was in the knowledge of the Department as permission under Rule 57F(2) of the Central Excise Rules was grafted and as such the entire transactions were purely commercial transactions; that there is no allegation that money remained permanently with them and as such there was no financial flow back. He emphasised that as partners are not common in both the units, the question of lifting the veil does not arise; that further existence of mutuality of interest, which was found by Collector, evidences existence of two units and accordingly the clearances of both the units cannot be clubbed together. The learned Advocate relied upon the decision in the case of Jagjivan Das & Co. v. C.C.E., Bombay-II - 1985 (19) E.L.T. 441 (T) wherein it was held that the factors like use of common telephone by the three firms consisting of relations, use of table space by one firm in the shop-cum office of another, use of common telegraphic address, location of three factories in the same compound, Commonness of partners, occasional use of buffing machines of one firm by others and mutual financial transactions without charging of interest, etc., are not conclusive circumstances to show that the clearances of the Appellants were for and on behalf of the others; that the appeal against this decision was dismissed on account of delay in filing the appeal by the Supreme Court as reported in 1989 (41) E.L.T. A133; 4. The learned Counsel also contended that the demand is time barred as the classification list was approved from time to time and the benefit of Notification No. 175/86 was also granted; that the R.T.12 returns of both the units were approved by the Department and as such no fact was suppressed or they did not withhold any information from the department; that demand has been wrongly calculated inasmuch as the amount was totally inflated; that they had actually paid duty amounting to Rs. 13.89 lakhs whereas the duty paid shown in show cause notice was Rs. 11.58 lakhs and this difference of Rs. 2.31 has to be deducted from the total duty of Rs. 4.41 confirmed in the impugned order; that Modvat credit amounting to Rs. 1,72,022/- has been rightly availed of as the raw material moved under procedure specified in Rule 57F(2). He also mentioned that the demand of duty on 28240 containers removed to godown of Meta Pack without payment of duty is not being disputed by them; that however those goods were not liable for confiscation as these were still available in the godown; that 32,640 containers which were in semi-manufactured nature are not liable for confiscation as certain

process were to be carried out at the premises of Meta Craft; that the duty amounting to Rs. 56,803 on account of debit notes issued has been paid through RG 23A Part II. He finally submitted that in absence of any suppression or misdeclaration, the penalty is not sustainable on the companies as well as their partners; that in any case if clearances are to be clubbed together, penalty cannot be imposed on two units; that no reason whatsoever has been set out for imposing penalty on Mr.

A.J. Shetty and there was no mens rea.

5. Opposing the submissions, Shri Jagdish Singh, learned DR, reiterated the findings of the Collector as contained in the impugned order and emphasised that the permission under Rule 57F(2) was given only for the process of cutting and welding whereas full metal containers were manufactured by Meta Craft; that as the fact of manufacture of entire metal container was not disclosed to the Department, there was suppression and accordingly extended period of limitation is invocable in this matter and as such demands are not time barred. On the issue relating to clubbing of clearances of both the units, the learned DR relied upon the decision in the case of *Ashok Enterprises v. CCE.*, Pune, 1997 (92) E.L.T. 77 (T) wherein it was held that two units, both partnership, one consisting of father and his sons and the other of father and his daughter-in-law, manufacturing same product, control over activities of both units exercised by father, technical assistance to both units provided by one sons, were part of one show belonging to the father and sons and the clearance of both the units are required to be clubbed for the purpose of exemption notification. He also relied upon the decision in the case of *H.T. Bhavnani Chemicals (P) Ltd. v.CCE, Baroda(T)* and *J.N. Marshall Pvt. Ltd. v.C.C.E.*, Pune, 6. We have considered the submissions of both the sides. Some of the facts which are not in dispute are that the partners of both the units are related to each other as the father and one son are partners in Meta Craft and his wife and his other son are partners in Meta Pack; that both units are manufacturing same excisable goods viz., Metal containers; that work of both the units is looked after by Shri A.J.Shetty, Father; that it has been admitted in the Memorandum of Appeal that Mr. K.S. Hule, Accountant of Meta Craft, was also helping Meta Pack in maintaining their accounts. The Collector has recorded his

findings after observing from the books of account/ledgers etc. that Meta Craft had rendered financial assistance to Meta Pack and Vice Versa by effecting payments on behalf of each other; that Appellants have only submitted that as both of them were doing job work on behalf of each other, payment was made for job work. Shri K.S. Hule, in his statement dated 22-7-89 has clearly deposed that "internal financial adjustments between M/s. Meta Craft and M/s. Meta Pack is done i.e. to say when there is no fund in one company then funds from other company is transferred----or payment to parties on behalf of one company is made by other company----. These financial adjustments were done with advice from Shri A.J. Shetty. "Shree Hule also deposed that Shri A.J.Shetty is deciding regarding the quotations and also on which companies name against which order/quotation is to be placed to customers." He also stated in his statement that all the process of cutting/rolling and seaming were done in Meta Craft only. It is also observed from the statements dated 22-7-89 of Shri Suresh L. Salian that on receipt of printed sheets of Meta Pack at M/s. Meta Craft, he prepares 57F(2) Challan which book is kept in the office of Meta Craft; that after the finished product is ready at Meta Craft pertaining to Meta Pack, he prepares the delivery challan of Meta Pack from the book kept at Meta Craft addressed to Meta Pack Marol Godown; that gate pass of Meta Pack is prepared only when the material is lifted from the godown to the party. He has also deposed that he prepares gate pass of Meta Pack for the metal containers directly despatched to the party from Meta Craft.

No where it has been claimed by the Appellants that these statements were retracted. It is only subsequently after more than one year, affidavits were filed by them which Collector has regarded as nothing but after thought and we find no reason to differ with him in absence of any retraction immediately after the recording of statements. We further observe that though Hule in his statement did refer to financial adjustment, his affidavit is silent about the same. He has only mentioned in the affidavit that "I have made an error in the said statements" and this error is with regard to clearance of complete metal containers directly from Meta Craft to the buyers on behalf of Meta Pack.

7. It has been held by the Tribunal in J.N. Marshal Pvt. Ltd, supra, that regard must be had to all the circumstances established in a given case but emphasis

must be on common control of production and sales or on management control and special financial relationship existing between the units or profit sharing or financial flow back and if the combination of circumstances create a pattern indicative of the clearance from the plurality of units being made by a 'manufacture' clubbing is warranted. In the present matter the combination of circumstances do indicate so and accordingly we agree with the findings of the Collector that the clearances of both the units are required to be clubbed for the purpose of exemption notification. The larger period of limitation as provided in proviso to Section 11A of the Central Excise Act is invocable as the facts were not disclosed to the Department. The learned Advocate, has mentioned that there was a mistake in working out the duty already paid to the extent of Rs. 2.31 lakhs. This aspect has to be checked by the adjudicating authority and correct amount of duty payable has to be intimated to the appellants who would pay the same. As the clearances of both the units are clubbed together the Modvat credit of the duty paid on inputs cannot be denied and accordingly demand of Rs. 1,72,022.64p on this score is set aside.

The learned Advocate has not disputed the demand of duty in respect of containers removed to godown and as such the said demand of duty is upheld. Similarly the demand in respect of revision of rates and issue of debit notes to M/s. HPCL Bombay is also upheld. We also uphold the confiscation of 28240 metal containers as these were removed from factory without payment of duty. The Appellants have not substantiated their claim that 32640 metal containers were in semi-finished conditions and as these were not entered in statutory records, the confiscation of the same is upheld. We, however, reduce the amount of redemption fine to Rs. 30,000/- from Rs. 1 Lakh. In the facts and circumstances of the case, we hold that penalty is imposable on Meta Craft and Sh. A.J. Shetty who was looking after the functioning of the units. However taking into consideration all the facts of the case. We reduce the Penalty to Rs. 1 Lakh on Meta Craft and Rs. 20,000 on Shri A.J. Shetty. The penalty on M/s. Meta Pack is set aside.