

B.M. Auto India Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-15-2002

Reported in : (2002)(103)LC956Tri(Delhi)

Judge : S Kang, a T V.K.

Appellant : B.M. Auto India

Respondent : Cce

Judgement :

1. The issue involved in this appeal, filed by M/s. B.M. Auto India, is whether they were employing more than 10 workers during the period prior to 30.44.85 (sic) and as such were covered by the definition of factory under the Factories Act, 1948 and whether benefit of Notification No. 77/83 is available to the goods manufactured by them.

2. Shri Sarabjit Singh, learned partner of the Appellants, submitted that the Appellants manufacture leaf springs and left spring assembly falling under Tariff Item 68 of the old Central Excise Tariff; that their small scale unit was not a factory under Section 2(m) of the Factories Act, 1948; that accordingly all the goods falling under Item 68 were fully exempted from payment of duty under Notification No.46/81-C.E., dated 1.3.1981; that they were showing more number of workers in the offer form or tender form to different organisations simply to attract business which was customary in business circles; that once the tender was accepted, it was not difficult for them to supply the goods from their own factory as well as from

the goods purchased from other manufacturers; that employees connected with office duties and having nothing to do with manufacturing process cannot be included; that they had only applied for registration in 1981 whereas the demand pertains to the year 1983-84 and 1984-85; that further the declaration is valid only for one year for which it is applied; that the fact remains that no registration under the Factories Act, 1948 was ever done since they never had more than 9 workers; that Survey Report of ESI Authorities is also no proof; that two more units were situated adjacent to their unit in the same complex and ESI authorities must have counted the workers of other two units. He, further, submitted that they were supplying substantial quantities of goods to O.E. manufacturers and such supplies were exempted from payment of duty under Notification No. 167/79-CE; that the Department had not established beyond reasonable doubt that the goods purported to have been supplied by them to O.E. manufacturers and others were in fact manufactured by them in their factory by producing vouchers of raw materials etc.; that no seizure of any goods had been made by the Department; that the possibility of procuring the goods as bought out items cannot be ruled out; that they had also not utilised their quota of L.D.O. completely; that they were engaged in trading activity from their Delhi office.

3. Countering the arguments, Mrs. Krishna A. Mishra, learned S.D.R., submitted that the enquiries made from the jurisdictional Inspector of Factories revealed that the Appellants had applied for registration under the Factories Act in 1981 stating that the number of workers employed on any one day during the last 12 months was 20 and number of workers to be employed ordinarily in the factory was 15; that the enquiry from the Regional Office of Employees State Insurance revealed that number of workers employed during 1983-84 was 17 and during the course of inspection on 21.5.1984, the number of employees found working was 20 and the ESI Act applies to factories using power and employing 10 or more persons; that the Appellants were covered under ESI Act; the learned SDR also relied upon the decision in Punjab Footwear Ltd. v. CCE Chandigarh wherein it was held that for calculating the number of workers, Contractor's Workers were includible. She further submitted that as their total value of clearance was Rs. 55.08 lakh during the year 1983-84 and Rs. 52.50 lakhs during the year 1984-85, the benefit of Notification No. 77/83 was not available to them. She also mentioned that they had

manipulated the value of clearance in respect of 3 invoices issued in July to September, 1983 and had shown less value; that the extended period of limitation is invokable as they had also suppressed the facts relating to number of workers in their factory. She relied upon the decision in the case of Siva Springs v. CCE Madurai wherein it was held that extended period is invokable when number of workers employed declared to be less than 10 but number of workers found to be more than ten. In reply the learned Partner of the Appellants mentioned that they never got the licence from the Factory Inspector and as such their unit was not a factory.

4. We have considered the submissions of both the sides. Notification No. 46/81 provides exemption to all goods falling under Item No. 68 other than goods manufactured in a factory. According to Section 2(m) of the Factories Act, 1948 "factory means any premises including precincts thereof wherein ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on.... The Adjudicating Authorities has given his specific findings that the Muster Roll and overtime payment sheets clearly reflects that more than 10 workers were employed and that "it is not acceptable that Shri Suraj Bhan employed by them would incorporate the name of all other industrial units...." The Appellants have merely averred in the memorandum of Appeal that the Muster Roll and register did not pertain to them. If the same did not pertain to them how were these resumed from their premises by the Central Excise Officers. The Appellants have thus not successfully controverted the finding as reached by the Adjudicating Authority in this regard. We, therefore find no reason to interfere with the findings that the Appellants had employed 10 or more workers during the relevant period and was therefore covered under the Factories Act. Consequently they were not eligible to avail of exemption under Notification No.46/81-CE. The Adjudicating Authorities has given his findings also in respect of their plea of supply of goods to O.E. manufactures as under: Further, there was no proof that the goods have actually been used as original equipment or have been used as replacement parts.

5. In the Appeal memorandum and also in hearing before us no proof has been brought on record to show that the Appellants had supplied goods to O.E. manufacturers during the relevant period. Further no proof of purchasing the goods from other manufactures had also been adduced by them. We also agree with the learned SDR that extended period of limitation for demanding duty under Section 11A(1) of the Central Excise Act is invokable as they have suppressed the material facts of employing 10 workers or more and the actual value of clearance of goods. The penalty imposed is also not on the higher side at all. We therefore, uphold the order and reject the appeal.

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