

Jindal Electricals and Jindal Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-20-2003

Reported in : (2002)LC591Tri(Delhi)

Judge : Author: K Usha

Appellant : Jindal Electricals and Jindal

Respondent : Cce

Judgement :

1. Challenge in these appeals at the instance of the assessee is against the order passed by the Commissioner dated 28.2.2002. The issue relates to clubbing of clearances of the two units, namely, M/s. Jindal Electricals and M/s. Jindal Electric & Machinery Corporation for the purpose of eligibility for benefit of SSI exemption.

2. Jindal Electricals are engaged in the manufacture of automatic voltage controller and industrial transformers since 1985. It is owned by an HUF, of which Shri B.B. Jindal is the Karta. M/s. Jindal Electric and Machinery Corporation is a proprietary concern of Shri B.B. Jindal from 1987. Both the firms were independently claiming benefit of SSI exemption. Show cause notice proposed to club the clearances of the above two units and deny the benefit of SSI exemption. The Commissioner confirmed the demand for the period April 2000 to September 2000. The Commissioner took the view that the extended period of limitation could not be invoked as the appellants had informed the Department the relevant facts. However, he imposed a penalty of Rs. 90 lakhs.

3. The Commissioner referring to the relevant notification observed that the exemption shall not be admissible if the clearances by a manufacturer from one or more factories or from a factory by one or more manufacturers had exceeded the specified limit during the preceding financial year. He took the view that Shri B.B. Jindal is the manufacturer in both the units and, therefore, the clearances of both units should be clubbed.

4. It is contended on behalf of the appellant that the above view taken by the Commissioner is totally untenable. It cannot be contended that Shri B.B. Jindal who is the Karta of the HUF which owns Jindal Electric & Machinery Corporation is the manufacturer of the factory owned by the HUF. He is only the Manager of the HUF and, therefore, the clearances from the factory belonging to HUF cannot be clubbed with the clearances made from the factory owned by him in his individual capacity. On behalf of the appellant several decisions arising under the Income-tax Act were relied on in support of the contention that the individual and a Karta of an HUF are two distinct legal entities. The Learned Departmental Representative would submit that the decisions arising under the Income-tax Act cannot be made applicable to the Central Excise Law. He submits that the question to be considered under the Central Excise Law is whether B.B. Jindal is manufacturer of both the factories.

5. It is accepted legal position and it is not disputed before us that an HUF can hold property and run business. While defining the word 'Manufacture' under Section 2(f) of the Central Excise Act, 1944 the word 'manufacturer' is also defined as follows: "The word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account." The above definition does not exclude an HUF from the meaning of the term 'manufacturer'. According to us, the ratio of the decision of this Tribunal in *Superior Products v. Commissioner of Central Excise, New Delhi, 2002 (144) ELT 187* should apply in the present case also.

Relevant facts of the above-mentioned case are as follows. M/s. Super Products is a partnership between Rita Dutta and Dr. Mrs. Tripta Dutta.

M/s. Superior Pet. Pvt. Ltd. is a Company where Rita Dutta and Tripta Dutta had investment alongwith four other shareholders. Both the units were being managed by Rita Dutta. The question that came up for consideration was whether Rita Dutta can be treated as manufacturer of both the units for the purpose of availing SSI benefit. The Tribunal took the view that both the assessees being separate legally understood juridical persons clearances from units held by them cannot be clubbed.

In the present case as mentioned earlier, the one unit being owned by an HUF where B.B. Jindal has only the status of Manager, its clearances cannot be clubbed with the clearances from the unit owned by him in his individual capacity.

6. We, therefore, set aside the order impugned and allow the appeals.

The appellants will be entitled to consequential relief including refund of pre-deposit made before this Tribunal.

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