

The Commissioner, Central Excise Vs. Bombay Neon Signs and Sign Crafts

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-14-2003

Reported in : (2004)(166)ELT102Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : The Commissioner, Central Excise

Respondent : Bombay Neon Signs and Sign Crafts

Judgement :

1. This is a Revenue's appeal against the Commissioner of Central Excise's order dated 29.4.95. The facts are: M/s Bombay Neon Signs is a SSI unit, working under SS1 Notification 175/86 manufacturing illuminated Neon Signs (ch.9405) and non-illuminated neon sign (ch. 8311.00). It is a proprietary firm owned by one Lalit K.Soni situated in the same building is another firm M/s Sign Crafts owned by his wife engaged in similar activity enjoys exemption under Notification 11/88 (NT) as its turn over is below the exemption limit. A perfect set up for Central Excise officers' visit and investigation. They did and the allegations are: 4. Since M/s Sign Crafts is a dummy unit, its clearances are liable to be clubbed with the ones of M/s BNS for the purpose of calculating the exemption limit under 175/86.

2. These allegations are based on some incriminating documents and some statements recorded during the course of investigation. They are: a) goods worth Rs. 9,000/- seized from the premises of M/s Sign Crafts belonged to M/s Bombay Neon Signs cleared without payment of duty.

b) Shri G.G. Shinde and Shri R. Borgc, employees of M/s Bombay Neon Signs admitted the contention in (a) above.

that both the firms belonged to Lalit K. Soni and that she looks after the day to day work of both the units from a common office but gets paid by M/s d) Shri Soni admitted that he is authorised by his wife to look after day to day work of M/s Signs Crafts. He also admitted that his firm did repair jobs for M/s Ajanta Pharma. This latter admission was confirmed by M/s Ajanta Pharma.

e) GP No. 9 dated 17.5.91 shows clearance of non-illuminated sign board to M/s Daavat Restaurant whereas on the corresponding challan as well as the recipient's records show that an illuminated sign is cleared.

f) GP No. 47 dated 18.01.92 indicates that a non-illuminated sign board was supplied to M/s Grasim whereas the evidence indicates that illuminated sign board is supplied (Shinde's statement).

g) R.D. Shah, accountant who looks after the work of both the units admits that no manufacturing activity is ever carried out in M/s Sign Craft's premises.

manufacturing activity goes on in M/s Sign Craft, and that except cutting and grinding machines no machinery is installed in M/s Sign Craft. Illuminated Sign Board cannot be made without electricity.

i) The average monthly electricity bills of M/s Sign Craft from 88 to 92 is only Rs. 25 to 30 whereas of M/s Bombay Neon Signs is Rs. 1,200/- to 1,300/- which only proves that no manufacturing activity goes on in M/s Sign Craft.

j) One Kasinath D vekar, an employee of M/s Sign Craft admits that the premises of M/s Sign Craft are used only as a storage place for goods made by M/s Bombay Neon Sign. The photograph taken at the time of drawing of Panchanama also records that no manufacturing activity goes on in M/s Sign Craft premises.

manufactures new letters/signs and removes them without payment of duty.

3. Hence the conclusion that both units are managed by the same person, Shri L.M. Soi and that M/s Sign Craft is a dummy unit. Show Cause Notice were issued

to both the units (the real one and the dummy) asking them to Show Cause Notice why Central Excise duty of Rs. 14,90,347.50 on the clearances made during 87-88 to 1992, penalties should not be imposed.

4. M/s Sign Craft responded to the Show Cause Notice stating that they had a muster roll of workers skilled and unskilled, that they did not use power while manufacturing their goods; that there were no financial transaction with the other firm and therefore theirs was not a dummy unit; that they filed Classification Lists in 88-89, 90-91 when they had a Central Excise licence describing their process of manufacture and that their electricity consumption was next to nothing because they did not use electric power.

5. The Commissioner accepted these contentions and in the light of decisions in the cases of M/s Renu Tandon 1993(66) ELT 375, Steel Traders 1994 (55) ECR 348, Alpha Toys Ltd. 1994(71) ELT 689 held that M/s Sign Craft is an independent and separate unit.

6. The Commissioner's conclusion briefly are that M/s Bombay Neon Sign and M/s Sign Craft are separate entities; that there was no attempt to remove fresh goods in the garb of repair jobs to evade payment of duty by M/s Bombay Neon Sign and that M/s Bombay Neon Sign were manufacturing both types i.e. illuminated and non-illuminated neon signs. She however held that the assessee (M/s Bombay Neon Sign) did not follow the procedure under Rule 173 H in so far as the Neon Sign found in the premises of M/s Sign Craft, confiscated it but allowed to be redeemed it on payment of fine. The Commissioner also held that M/s Bombay Neon Sign exceeded the exemption limit of Rs. 15 lakhs per year under Notification No. 175/86 to the extent of Rs. 15,146/- in the year 88-99 and therefore are liable to pay duty on this amount which worked out to be 3975.85 (BED + SED). The Commissioner demand this duty.

7. The Revenue's contention is that the Commissioner ought to have appreciated the evidence as has come out in the statements of various employees; that the Commissioner should have given due credence to the fact that M/s Sign Craft is a dummy unit in as much as no manufacturing activity was carried out there but only clearances were shown; that the Commissioner should have given due credit to

the fact that employees in both the firms are common and that Shri Soni was managing the affairs of both the firms; that the Commissioner should have appreciated the fact that the two gate passes cited as evidence clearly show that the assessee was clearing illuminated neon signs in the garb of non-illuminated ones and finally that the repair charges in certain cases are so high that one could safely conclude that the assessee was clearing fresh goods. The Revenue therefore pleads that the order of the Commissioner be set aside.

8. The respondent is represented by Shri M.H. Patil Id. Advocate and the Department by Shri Shukla the Id.SDR. The Id. SDR amongst other pleas, argued that the facts and circumstances of each case should be properly appreciated in cases where suppression of production is alleged to avail of SSI exemption Notification No. 175/86. The Commissioner went by the case law instead of appreciating the evidence.

The Id. Advocate on behalf of the respondents strongly supported the Commissioner's order. He argued that the Commissioner in fact dealt with the evidence on merits with the help of the case law. He pleaded that there is no infirmity in the order of the Commissioner.

9. We observe that the Revenue's plea that the Commissioner in the impugned order, failed to appreciate the evidence in the form of statements of employees, electricity bills, workers wage register etc.

before concluding that M/s Bombay Neon Sign and M/s Sign Craft are independent of each other, is not correct. The Commissioner precisely observed that the fact that the two units are situated in close proximity, that both have some common employees, that they have common management office and that they have common electric connection is not enough to conclude that one of them is a dummy unit. Relying on the ratio of the judgement in the case of Renu Tandon v. Union of India 1993 (66) ELT she observed that the essential ingredient of common funding and financial flow back is missing in the present case. The Department has indeed failed to bring out this important clement.

Relying on the decision of the Tribunal in the case of International Dye Stuff Mfg. Co. v. CCE 1991 (53) ELT, she held close relationship between the persons controlling the unit is not enough, unless that finances from the second firm flowed from the first firm, to decide one of them is a dummy. Same principle is laid down in the case of Shree Packaging Corporation v. CCE 1987 (32) ELT 94. Further it was held that even the fact that common persons were employed in both firms functioning in adjacent premises, was not enough to hold that one of them was a dummy. The Commissioner gave a clear finding that conclusion drawn that no manufacturing activity was going on in M/s Sign Craft in the Show Cause Notice on the basis of consumption of electricity because consumption of electricity is low in those premises is erroneous.

10. The Commissioner dealt with the evidence and put such evidence to test in the light of various decisions of the High Courts and Tribunals. Funding and financial flow-back are important elements in determining whether or not the units have to be clubbed for the purpose of determining the eligibility to the benefit of SSI Notification No.175/86. The Department's evidence in the forms of employees' statements has to be viewed in the light of what the employers themselves have to say about the nature of their firms. Further electricity consumption being so low in M/s Sign Craft's firm is explained by the properties of the firm. The Commissioner's reliance on the decisions in Steel Traders (1994 (55) ECR 348 and Alpha Toys (1994 (71) ELT 689) cases is appropriate. Basically what the Commissioner has done is to take into consideration the nature of evidence the Department gathered and decided whether or not the dummy nature of one of the firms is established. This she has done with the help of the case law on the subject. 11. The Commissioner also examined the Departments' contention that M/s Sign Craft have not been manufacturing any goods at all and all work was done by M/s Bombay Neon Sign and rejected the allegation as unsubstantiated. She referred to the various CLs filed by M/s Sign Craft giving out the process of manufacture and observed that the Department never doubted the contents of the CLs filed.

12. The Commissioner also examined the other contentions such as number of workers, skilled or unskilled, employed by M/s Sign Craft in detail and held that no

evidence has been brought out by the Department that the unit was not working at all during the material time. We find no reason to conclude that the Commissioner has failed to appreciate the evidence, as it were, placed before her.

13. The Revenue claims that the assessee has been manufacturing only illuminated sign boards but clearing them as non illuminated sign boards as evidenced from invoices of M/s Grasim Industries. The discrepancy in the corresponding GPI proves this point, according to Revenue but the Commissioner did not give a specific finding in this regard.

14. We have perused the impugned order. Indeed the Commissioner does not specifically refer to the evidence in the case of M/s Grasim Industries. But what she categorically rules is that the Departments' claim that the assessee was manufacturing only illuminated signs and not non-illuminated at all, is not substantiated. She relies on the decisions in the case of *Crystlic Resins v. CCE* (1985 (19) ELT 285 wherein the Tribunal held quote ".....The utmost accuracy and certainty must be the aim of a notice of this kind and not a shot in the dark like the notice before us" unquote. The Commissioner holds that to come to conclusion that the assessee in the present case is only manufacturing illuminated signs but creating a make believe that non-illuminated signs were also being manufactured by him, evidence of a higher quality is required. Merely sighting one or two instances of mismatch in the invoice and gate passes, is not enough to quantify evasion of duty. We observe that the assesses have explained how mistakes were committed in the case of goods supplied to M/s Grasim Industries and M/s Dawat Restaurant and how they rectified their mistakes later on. But the point the Commissioner was making was that a sweeping accusation that the assessee were not manufacturing non-illuminated signs can not be made on the basis of two instances. We agree with such a conclusion.

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