

Uma Engineering Pvt. Ltd. and ors. Vs. Cce and C

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-31-2003

Reported in : (2004)(114)LC472Tri(Mum.)bai

Judge : K Usha, N T C.N.B.

Appellant : Uma Engineering Pvt. Ltd. and ors.

Respondent : Cce and C

Judgement :

1. The above appeals are directed against order passed by the Commissioner of Central Excise & Customs, Surat dated 29.8.1997. Under the above order the Commissioner has confirmed duty demand against M/s.

Uma Engineering Pvt. Ltd. (hereinafter referred to as UEPL) to the extent of Rs. 44,55,116. He directed confiscation of land and plant belonging to UEPL under Rule 173Q(2)(a) of the Central Excise Rules, 1944 and imposed redemption fine of Rs. 20 Lakhs. A penalty of Rs. 10 Lakhs was also imposed on UEPL. Appeal E/2638/98 which is the main appeal is at the instance of M/s. UEPL. The Commissioner had imposed penalty at the rate of Rs. 10 Lakhs on M/s. Uma Engineering Pvt. Ltd., M/s. Auto Looms India, M/s. Keyur Engg. Pvt. Ltd., M/s. Gayatri Engg.

Works, M/s. New Auto Looms India Pvt. Ltd. Appeal Nos. E/2648/98, 2644/98, 2642/98, 2640/98 and 2646/98 are respectively at the instance of the above-

mentioned parties. The Commissioner had imposed penalty at the rate of Rs. 5 Lakhs on Shri Rameshbhai U. Pandya in his capacity as Director of M/s. Uma Engineering Pvt. Ltd. Proprietor of M/s. Auto Looms India, Director of M/s. New Auto Looms India Pvt. Ltd. Proprietor of M/s. Gayatri Engineering Works and Director of M/s. Keyur Engg. P.Ltd. He has filed appeal Nos. 2641/98, 2643/98, 2645/98, 2647/98 and 2649/98 challenging the imposition of penalty against him. Appeal E/2639/98 is at the instance of Smt. Bhartiben R. Pandya, Proprietor of M/s. Uma Engineering Works. On whom the Commissioner had imposed a penalty of Rs. 5 Lakhs.

2. We will first consider E/2638/98 filed by M/s. Uma Engineering Pvt.

Ltd. (UEPL). Since the demand is directed against the above appellant.

The main contention raised in this appeal is that the appellant is engaged only in trading activities it has no manufacturing licence nor is it engaged in manufacturing any item. Therefore no demand could be directed against it in the matter of excise duty in respect of goods manufactured by other units.

3. In the show cause notice the allegation was that UEPL, a Company incorporated under the Companies Act have created 5 associate firms who are manufacturing textile machinery and parts thereof; that the said manufacturing firms had manufactured machinery framework/structure in their respective factories and cleared the same directly to the site of the customers of the appellant on payment of duty under GP 1; that the appellant had also arranged to procure and to have delivered directly to the site of the customers other essential parts like Chain, Pulley, Motor etc. and that since the appellant had negotiated with the customers for complete machine and obtained full payment for complete machine, the appellant is deemed to be a manufacturer of a complete machine and would be liable to pay duty on the entire value of the complete machine.

4. It was the case of the appellant that it is a Private Limited Company engaged solely in trading activity having no factory or any premises for manufacture of any items whatsoever. Their entire business premises consist of an office area of 18 x 12 sft. They never had any factory or plant and machinery or technical know-how

or technical staff to undertake any activity in the nature of any process of manufacture.

During the relevant period i.e., from April 1990 to February 1993 the appellant had procured orders for certain textile machinery which they executed in the following manner: The machinery framework/structures were got manufactured from 4 manufacturers, viz., M/s. Keyur Engg. Pvt. Ltd., M/s. Uma Engg.

Works, M/s. New Auto Looms (I) Pvt. Ltd. and M/s. Auto Looms (I).

They were asked to manufacture and deliver the same on payment of appropriate duty of excise directly to the appellant's customers.

All these manufacturers were L-4 licence holders and had cleared the subject goods as per approved classification list, price list and under valid GP-1s. Essential components like Chain, Pulley, Motor etc. which are admittedly not manufactured by the 4 manufacturers were purchased by UEPL from open market and caused to deliver them to other customers directly. It was further contended that in majority cases the activity of assembling, erecting and commissioning of the complete machinery was carried out by the concerned customers and only in a few cases 4 manufacturers had extended their assistance and/or labour but in no single case UEPL was involved directly or indirectly in the activity of erection and commissioning. It is further contended that on many occasions the UEPL had supplied only components manufactured by the four parties without supplying the remaining essential parts which were procured by the concerned customers themselves. Reference was made to several invoices in support of the above submission. There were also instances where UEPL had supplied only the essential parts bought out from open market without combination of supply of corresponding machine framework manufactured by the four parties. Relevant invoices are also relied on in support of the above submission.

Appellants further pointed out that UEPL had supplied to its customers machine framework etc. which were manufactured by parties other than the four referred above. So also the four manufacturers referred above had supplied their product to customers directly without the intervention of UEPL. On certain occasions they

had supplied complete machinery including bought out parts procured on their own. In support of the above contention reference was made to relevant invoices. It was also the case of the appellants that it was never concerned or involved directly or indirectly in assembling, erecting or commissioning machinery at the customers site. Statements given by the customers in the year 1993 would go to show that such activities were carried out by the customers themselves. It is contended by the appellants that subsequent statement made in the year 1995 contradicting their earlier statements cannot be relied on as they were obtained on the threat of the officers of the department.

5. Commissioner did not accept the contention raised by the appellants and confirmed the duty demand. It is contended before us by the Learned Counsel for the appellants that on the basis of specific allegation in the show cause notice that the four manufacturers were the actual manufacturers, no excise duty could be demanded from UEPL. It is pointed out that even in the order impugned the Commissioner has proceeded on the basis that the four manufacturers are the actual manufacturers of the fabricated parts of the textile machinery and they were delivering the goods to different customers as per instructions given by UEPL. This would also show that UEPL is not manufacturer at all. That being the position the appellant would contend that no liability for excise duty can be imposed on it.

6. Learned Counsel for the appellants addressed other contentions also including contention on the issue of limitation.

7. Learned Departmental Representative, on the other hand, would submit that the four manufacturing units being sister concerns of M/s. UEPL the demand against M/s. UEPL would be sustainable. Manufacturer noticees have manufactured textile machine and cleared the same in SKD condition to different customers through UEPL. Therefore, excise duty has to be paid on the value of the machine as a whole.

8. Certain facts are admitted in this case, namely, M/s. UEPL has no manufacturing unit. Manufacturing activity is carried on by 4 other units. In the show cause notice allegation was that UEPL had created 5 associated firms who are manufacturers of various types of textile machinery and parts thereof. On the

other hand, finding of the Learned Commissioner is that UEPL was formed by 5 manufacturing units. The manufacturing units planned to create one marketing agency, namely, UEPL who used to sell the textile machines of all these noticees along with parts/accessories purchased by them from open market. And as such while selling the textile machine to the customers, though price was agreed for the complete machine, the fabricated parts and bought out accessories were billed separately in the same sales invoice by UEPL.

Thus the under-valuation of textile machine was done during 7.4.1990 to 12.2.1993 and that for short payment of central excise duty on the undervalued prices the present show cause notice has been issued demanding central excise duty short paid/not paid by the noticee units.

The Commissioner further observed as follows: It is seen from the records that UEPL is a distributor of all the 5 noticee manufacturing units and for that purpose they entered into an agreement according to which machine manufacturers have to execute the order placed by UEPL and make arrangement for installation and commissioning of machine in the premises of customers to whom UEPL sold out the same.

In the present case, I note that all the actual manufacturers have manufactured/fabricated parts (main body) of the textile machine and as per the instruction/direction of UEPL delivered to the different customers i.e., industrial users and essential integrated parts/components like electric motors, starters, belt pulleys, cylinder, chain were stated to have been supplied by M/s. UEPL.

After referring to the relationship between the Directors and Proprietors of UEPL and other manufacturing units the Commissioner comes to the conclusion that they are all related, namely, husband-wife relation. Commissioner has further held that UFPL is a purely sister concern of the manufacturers of textile machine. If the sole selling agent is described as sister concern, these sister concerns cannot be considered as an independent customer. The Commissioner further states that the transaction between the manufacturer and the sole selling agent cannot be considered as one at arms length. They are to be treated as 'related person' and, therefore, duty should have been paid by the noticee units on the value charged

by UEPL to the customers. It was found that there was no duty demand against these manufacturers.

Under the show cause notice duty demand is directed only against UEPL.

9. Commissioner proceeds to hold that UEPL is to be treated as a manufacturer since it was created by five manufacturing units with the intention of undervaluing textile machine by splitting up the value of complete machine into two parts. We are of the view that the appellant is fully justified in contending that the Commissioner has proceeded on a different footing from the allegation in the show cause notice. The issue of under valuation was not there in the show cause notice. Apart from the above, while in the show cause notice allegation is that UEPL creative five associated firms who are manufacturing units, according to the Commissioner it is the other way round. Appellant is fully justified in contending that its activity being trading activity and it admittedly having no manufacturing unit cannot be made liable for excise duty. The facts in this case would show that in its trading activity the appellant on certain occasions supplied only bought out items. In the nature of transaction detailed above, we are of the view that there is no merit in the allegation of under valuation. This is not a case where the manufacturer is engaged in the activity of assembling components manufactured along with bought out items which are integral parts of the excisable commodity. Therefore, the ratio of the decision of the Supreme Court in Nare Tulaman Manufacturers Pvt.

Ltd. v. CCE Departmental Representative will have no application in the facts of the case. In the present case, a private limited company, namely, UEPL is engaged in trading activity. It makes arrangement with manufacturing units to supply certain parts of textile machinery directly to the customers, purchase other components from market and directly supply to the customers. Under these circumstances it cannot be held that the value of bought out items and the parts purchased by the trading company are to be added to the assessable value. For the above reasons we come to the conclusion that the appeal filed by UEPL is to be allowed.

10. In the light of the above view taken by us in the appeal of UEPL, appeals filed by other noticees are also to be allowed.

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

There will be a direction to the respondent to refund the amount deposited by the appellants pursuant to the interim order passed by this Tribunal within a period of three months from the date of receipt of a copy of this order.

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