Commissioner of Central Excise Vs. Perfect Tools, S.N. Bhogale,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-20-2004

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Perfect Tools, S.N. Bhogale,

Judgement :

1. A Show Cause Notice was issued consequent to enquiries launched, when it was noticed that M/s Perfect Tools and M/s Precission Press Tools situated at Ghatkopar Industrial Estate, Mumbai had not filed any declaration under Notification No. 9/88. M/s Perfect Tools is a proprietary concern of Shri Sakharam Narayan Bhogale, who also held another proprietary concern in the name and style of M/s Bhogale Industries at MIDC, Nasik. There was no separate registration of M/s Precision Press Tools, either with the Municipal or Industries Department of the State Government and based on the enquiries made, the value of the goods cleared in the name of M/s Perfect Tools and M/s Precision Press Tools, M/s Bhogale Industries are required to be clubbed and be liable for payment for the purposes of determining the eligibility to avail Notification 175/86-CE on the allegation made that the unit suppressed the existence of the units only for the purpose of bifurcating with the intention to remain in the SSI limits and therefore it was not even registered with the Director of Industries prior to 28.7.1992 and consequently not liable for the benefit of the Notification.

2. The Commissioner, after considering the question of clubbing of clearances held that M/s Precision Press Tools were supplying raw materials partly to M/s Perfect Tools and getting the goods manufactured and therefore M/s Perfect Tools were the manufacturers and the value of goods which M/s Precision Press Tools got manufactured from M/s Perfect Tools was to be included in the turn over of M/s Perfect Tools and the value of the goods which M/s Precision Press Tools were manufacturing for other manufacturers were not to be taken into account while working out the demand. Since M/s Perfect Tools has started manufacturing activities in the year 1988-89 and their assessable values for the said period was 2,99,995/- and for the year 1988-89, M/s Bhogale Industries was Rs. 3,20,066.55. Therefore, the total turn over of the two companies for the year 1988-89 was Rs 6,20,061.75 and there was an amendment made to Notification No 175/86 entitling exemption to clearance upto Rs 7.50 lakhs even without SSI registration. He did not uphold the charge and ordered the duty demanded to be worked out to Rs 22,719/- and confirmed on M/s Perfect Tools, imposed a penalty of Rs 5000/- on M/s Perfect Tools and a compounded licence fee under Rule 174 was levied for not taking out Central Excise licence. No personal penalty was imposed on S.N.Bhogale.

(a) M/s Perfect Tools, and M/s Bhogale Industries belong to same manufacturer, namely Shri S.N. Bhogale and the clearances were to be clubbed and since the these units M/s Precision Press Tools, were carrying out trading activity only, wherein they were supplying raw materials to other units including M/s Perfect Tools and the Commissioner erred in extending the benefit of the Notification by treating dies manufactured by M/s Perfect Tools and M/s Bhogale Industries falling in different chapters.

(b) The reliance placed by the Commissioner on the verification that M/s Bhogale Industries, Nasik was outside the jurisdiction was not correct, since they could have obtained the verification from the Range Superintendent, Nasik. Therefore the reworking of the demand and clubbing of part of the demand was not called for.

4. After hearing both sides, and considering the materials on record, and the fact that the question involved is clubbing of clearances of two proprietaiy concerns of Shri S.N. Bhogale, viz M/s Perfect Tools, Mumbai and M/s Bhogale Industries, Nasik with the turnover of partnership concerns consisting of partners of wife and son i.e. M/s Precision Perfect Tools, the issue of clubbing of such clearances has to be determined in terms of the Board's orders issued under Section 37B of the Act and the judgement of the Supreme Court in the case of M/s Supreme Industries 2003 (151) ELT 14 (SC) which has not been applied in the facts of this case. Therefore, this order is set aside and the matter is remitted back to the appropriate authority for rehearing the matter and deciding the issue of clubbing afresh in terms of the above Board's order under-Section 37B and the Supreme Court's findings.

5. The appeals are allowed as remand keeping all issues open.

(Pronounced in Court)