

Commissioner of Central Excise Vs. G.H. Singhvi and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-19-2004

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : G.H. Singhvi and ors.

Judgement :

1. The brief facts of the case are that M/s. Konkan Synthetics Fibres (proprietor Century Enka Ltd. hereinafter referred to as M/s. CEL), C-61, MIDC, Mahad (hereinafter referred to as M/s. KSF) held a Central Excise Registration for manufacture of partially oriented yarn (POY) and different types of processed yarn (POY) falling under CH. 54.02 and 55.05 of CETA, 1985 respectively, in a single composite plant. They were availing Modvat/Cenvat credit and paying Central Excise duty on ad-valorem basis. They submitted an application dtd. 16.3.2000 and requested for bifurcation of the existing manufacturing site at Plot No. C-61MIDC, Mahad into two parts. According to them, such bifurcation was necessitated to implement product group management concept and to give greater flexibility and more freedom in decision making, manufacturing as well as marketing of the products. They also requested for separate Central Excise Registration of these two premises to be carved out of the original site. Relying on the reasons and information provided by M/s. KSF, the alteration in the manufacturing site was allowed and two parts were created by erecting a boundary wall and after making other changes in the ground plan. These

physically separated sites were given separate Central Excise registration with effect from 26.4.2000. The existing registration was amended and it was endorsed in the name of M/s. KSF (processed yarn unit). The premises carved out of the old unit having facilities for manufacture of POY was given separate registration Number. After investigation, it was revealed that M/s. KSF. CEL) had misled the Central Excise Department by misstating the facts in order to separate the existing manufacturing premises into two premises in order to claim benefit of Notfn. No.6/2000 dtd. 1.3.2000 which was not admissible to erstwhile unit of M/s.

KSF, which was composite unit having facilities for manufacture of POY and processed yarn. It appeared that the assessee had wilfully mis-stated the facts with an intention to evade Central Excise duty and contravened the provisions of Rule 174 of the Central Excise Rules and other provisions of the Rule and also rendered themselves liable for penal action under Rule 173Q of ibid. Accordingly show cause notice was issued to M/s. KSF vide office F. No. V(17)54CL-51/KSF/00/Mhd/1494 dtd.

12.4.2001. asking M/s. KSF and others to show cause to the Deputy Commissioner, Central Excise, Mahad Dn. as to why (i) The amendment/alteration allowed in the registered premises of erstwhile M/s. KSF (Prop. Century Enka Ltd.) at C-61, MIDC, Mahad should not be revoked.

(ii) The amendment in the Central Excise Registration of erstwhile M/s. Kokan Synthetics Fibres (Prop CEL.) at C-61, MIDC, Mahad vide which it was endorsed in the name of M/s. KSF (Processed Yarn Unit) Mahad w.e.f. 26.4.2000 should not be revoked and why original prior to 24.4.2000 should not be restored in terms of Rule 174 ibid.

CED/M-VII/MIID-R-III/1/2000 dated 26.4.2000 issued to M/s. KSF (POY) unit should not be revoked in terms of Rule 174 ibid.

(iv) The penalty should not be imposed under Rule 173Q Central Excise Rules, 1944.

The Deputy Commissioner, Mahad Division decided the case vide Order-in-Original dtd. 25.5.2001, holding that (a) the assessee under the garb of implementation taken of product group management concept separated the "POY" manufacturing portion of their manufacturing site from processed yarn manufacturing section in order to avail the concessional rate of duty in terms of Notification No. 6/2000 dtd. 1.3.2000 which was otherwise not due to them.

(b) That the assessee has made misdeclaration, mis-statement of facts before the Central Excise Department and misled the department. This includes factually wrong instructions about product group and mis-statement about reaction of two unit namely M/s. KSF (POY) & KSF (PY) which was not in existence as on date of application.

(c) That only a legal person can make application for registration under Rule 174 of Central Excise Rules, 1944 and KSF (Prop CEL) are not legal person.

(d) They cannot make any application for registration or any amendment in the existing registration.

(e) That the R.I application dated 16.3.2000 is also invalid in law as the said unit was not in existence on the date of application also it is not legal person as required under Rules, 1944. It was also not in existence even on date of registration. The signatory to this R-I application has claimed to be authorised signatory of M/s.

KSF (POY) unit which is factually wrong as no such authorisation.

(f) That the premises continued to be one premises even after so called bifurcation.

(g) That the single composite unit M/s. Konkan Synthetics Fibres (Prop CEL.) continued to function as one single unit even after so called bifurcation.

(h) That there was clear violation and breach of provision and conditions of Rule 174 CER, 1944.

(i) That there was contravention of Rules 42,43,44 of Central Excise, Rules, 1944.

(j) That the two separate registrations are revocable in terms of Rule 174. Accordingly he revoked two registration and restored the original position. He also imposed penalty of Rs. 1,00,000 each on all the Noticees. Aggrieved, noticees filed appeals before the Commissioner (Appeals) who vide his Order-in-Appeal dated 9.8.2001 allowed the appeal of the assessee and set aside the Order-in-Original. Hence, these appeals by the Revenue.

2. We have heard both sides. The letter dated 16.3.2000 under which application for separate registration was made, reads as under: Konkan Synthetic fibres is a division of M/s. Century Enka. Ltd. (CEL), a company registered under. The Companies Act, 1956 and are engaged in the manufacture of Polyester Filament yarn required for textile operations for the last more than ten years. We have kept pace with the development of the PFY industry and the emergence as also greater use or value added products and have accordingly established facilities not only for manufacture of PFY but also for value added products viz. Texturised Yarn, Draw Twisted/Draw Warper Yarn, Dyed Yarn, etc. CEL is a multi locational company manufacturing variety of products which are briefly given below:

Location/Site	Name	of	the	Products	manufactured
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unit/division Pune (Century Enka Ltd. POY. PFY. NIC Mahad Konkan Synthetic fibres; POY. PFY Bharuch Rajshree Polyfil Chips POY The corporate office for all the three location is at Pune site, the production and marketing of the products manufactured at various location is generally under the control of the Managers/CEOs who are in charge of each site location. This was a natural fallout of the fact that each site/location was separately developed at different points of time. However, we now find that this is an inefficient way of managing our business. The market for POY and the market for value added products is different and different strategies are required to address the market. Production and planning have to be altered in the light of what the market requires. It has therefore been decided to revamp the traditionally followed management structure and replace the same with concept of Product Group management which is widely practiced by many good companies. Under the concept, it is the product which is the main theme and not the location/site.

Accordingly certain types of products manufactured at all the three sites were brought under one management group which was responsible for all the functions i.e. Production, Marketing, Finance, Administration, Purchase, etc., relating to those products.

The different product groups formed out of various products manufactured at above-said three sites are as below:

Product	Group	Name	Products	manufactured	at	different	sites
POY Chips, POY Textile Industrial	Yarns	Yarn (Processed Yarn) PFY. NFY (Processed yarn)	Industrial	Yarn	and		fabric

Implementing the Product Group concept at Mahad site was becoming difficult since the very few number of High Speed Spinning (USS) Machines resulted in a limited capacity for producing POY; However, to ensure smooth change-over to Product Group concept, initially an exception was made so that the HSS machine and its product POV was continued to be managed by the Product Group--Textile Yarn. Due to difficulties, we have not been successful in achieving the basic objective of the Product Group concept in the true sense. As, by now the product groups are functioning smoothly, in order to conclude the change-over and to further consolidate the new management structure, it has now been decided to hand over the total control/management of the HSS machines at Mahad to the Product Group--POY--This will not only enable the Product Group to function more effectively but also give much needed focus to the two separate product groups at Mahad site. This will also in the long run, enable the two product groups to consolidate, expand and grow in their respective areas. For achieving this to the best possible extent and to give greater flexibility and more freedom in decision making, manufacturing as well as marketing of its products and to have stricter cost controls, it has been decided to completely segregate these two units by a suitable compound as well as a separate In/Out gate with independent administrative set-up.

This will practically segregate the sites with separate piece of land, buildings, manufacturing machines and utility services except very limited areas of services like ETP, compressed air, etc. for which adequate transfer pricing mechanics will be put in place so that appropriate cost of such services provided by one unit will be chargeable to the other.

As a part of this process, taking a separate excise registration becomes imperative and therefore we are submitting herewith our application in Form RI for registration of the new unit in name and style of KONKAN SYNTHETIC FIBRES--POY UNIT. The ground plan with detailed write up about manufacturing process, is enclosed.

Simultaneous to granting new registration, you are also requested to modify the ground plan of existing unit by deleting the areas now transferred to new unit and also adding the words "Processed Yarn Unit" after the present name which will now stand modified as KONKAN SYNTHETIC FIBRES--PROCESSED YARN UNIT. We would also like to add that presently our products attract advalorem excise duty @ 36.8% and we avail Mod va t/Cenvat credit on inputs as well as capital goods used by us. After segregation, the product of new unit--POY will attract excise duty @ 36.8% advalorem and will continue to avail Cenvat credit as at present. There will be no backward movement of material from the Processed Yarn Unit to POY Unit. All the clearances from the POY Unit including the requirements if any, of Processed Yarn Unit will be made, only after payment of applicable excise duties. The products of the other unit--Texturised and Draw Twisted/Draw Warper Yarn will be chargeable to a specific duty @ Rs. 287/kg. Dyed Yarn will be chargeable to a specific duty of Rs. 10.35/kg. and Twisted yarn manufactured out of duty paid Textured or Draw Twisted (Processed) Yarn will be continued to be exempted. Further in view of the applicability of specific duties, the Processed Yarn unit will not be availing Cenvat credit either on inputs or on capital goods.

You are therefore requested to grant us the registration at an early date. We will be pleased to provide you any further information in this regard.

3. From the above, it is seen that prior to the concept of Product Group Management, the respondents used to follow the Site Management System

irrespective of different types of products, so as to maximise products and profits. However, due to certain difficulties such as building up of inventory, crash in prices of product, demand not matching supplies etc., the Product Group Management concept was created whereunder, everything other than the corporate functions, right from purchases, marketing, production facilities, maintenance, stores etc. were placed under control of the "product head" irrespective of the site or functional area. The Product Group Management System was implemented in a restricted manner since 1998 and in July 1998 certain types of products manufactured at three different sites viz. Pune, Mahad and Mumbai were brought under one Management Group. The different products groups formed out of various products manufactured from the above mentioned sites are set out below:

Product	Group	Name	Products	manufactured	at	different	sites
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POY Chips and POY Industrial Yarns	Industrial yarn and fabric.
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At the respondents' factory at Pune, where PFY, NFY and NTC was manufactured, it was not possible to segregate the manufacturing activities product wise, but in respect of the Mahad site it was possible as the machinery for manufacturing POY and machinery for manufacturing processed textile yarn already existed in separate building. Further, the Mahad site had only a few High Speed Spinning Machines for the manufacture of POY which resulted in limited capacity for POY production. Therefore, the Product Group Management System was started in July 1998 in a limited manner without complete segregation, with the result that even after July 1998, POY continued to be manufactured by the Product Group 'Processed Textile Yarn'. In other words, the units had not been completely segregated. Certain changes were gradually initiated such as restructuring of organisational structure, active participation of the Dy. General Manager of plant operation in production planning, division of marketing operations into two different marketing entities, i.e. Marketing POY and Chips and Marketing Textile yarns. However, this partial limited implementation of the Product Group Management Concept created some problems such as monitoring of performances of the two major production facilities at Mahad and poor co-

ordination and accountability between the Spinning and winding production department on one hand and the Quality Control Department on the other. The management of the respondent company was of the view that non-implementation of the basic tenets of the Product Group Concept also resulted in non-achievement of the objectives of operational efficiency, style of management, permanent cost reduction, improved financial performances etc. and therefore, in March 2000, the management decided to strengthen the Product Group Concept at Mal^d and applied for separate Excise Registration for KSF (POY). The Central Excise authorities sought certain information including details of production of POY and PFY for the years 1998-1999 and 1999-2000 which was provided by the respondents. On 11.4.2000, the jurisdictional Range Supdt. informed the respondents that a separate compound wall, ground plan, in-out gate, BSR etc. must be made, as he had been directed to issue a new Registration certificate to KSF (POY). They initially erected barbed fencing with a temporary gate and later put up new construction in the form of compound wall, sorting/packing building, security office, separate in-out gate etc. Changes were also made in existing structures and building in both KSF (POY) unit as well as KSF(PYU; unit. Once these separate licences were granted, the respondents also made other changes such as

- (1) Transfer of KSF (POY) managerial, administrative, financial and overall control from the Product Group--Textile Yarns to the Product Group Head--POY.
- (2) Bifurcation of quality control department
- (3) Transfer of all employees concerned with POY production, maintenance, stores, purchase, finance etc. to KSF(POY),
- (4) Segregation of accounting functions of both units,
- (5) separation of tax deduction system including deposit of TDS and TDS returns,
- (6) Segregation of separate stores department,
- (7) setting up of separate purchase department for POY unit,

(8) Separate material movement with separate in-out gate. The respondents also obtained permissions from the Labour Union for separation of KSF into two units, each unit charging the other for services provided viz.

water, electricity, refrigeration, information technology etc. under a Memorandum of Understanding between the two units on 2.5.2000 and debit notes were regularly issued. The respondents also applied to various Government Authorities for licences and permissions such as separate factory licences, separate electricity meters and separate water meters which were all granted. Approximately, Rs. 27 lakhs was spent by the respondents on putting up new construction including compound wall.

4. None of the relevant facts for obtaining separate registration were either mis-stated or suppressed as contended by the Revenue in the appeal before the Tribunal.

5. The reference made to common sales tax registration is not relevant as under the Sales Tax provisions only a single tax registration is required for each State even if there are separate factories.

6. As regards violation of Rules 43,44 or 45 invoked in the show cause notice, we agree with the respondents that none of these Rules have been contravened. Rule 43 refers to notice to be given by manufacturer who intends to manufacture excisable goods for the first time. This rule is not attracted in the present case where the respondents have been carrying on manufacture of POY for a considerable period of time.

It is also pertinent to note that from 26.4.2000 when a new registration certificate was granted for the POY unit, declarations under Rule 173B and Rule 173C as well as RT12 returns had been accepted from both the units. As regards Rule 44 and Rule 45, they are also not applicable as it has not been shown that at any point of time, the respondents were directed by the Commissioner to comply with any directions as required under the above-mentioned two Rules.

7. The submission of the Revenue that KSF is only a manufacturing division of the respondent company and is not a person eligible to apply for registration and therefore the application under Rule 174 is not valid in law, cannot be accepted. The letterhead of the erstwhile KSF itself states "M/s. Konkan Synthetics Fibres (Prop. CEL)". The application states that M/s. KSF are a Division of M/s. Century Enka Ltd. Further application for L. 4 licence in 1989 was made by erstwhile M/s. KSF and in 1992 when Central Excise registration was required instead of licence, it was the erstwhile KSF that made the application and was also granted Central Excise Registration. At no point of time did the Excise Authorities raised the issue that a Division of a company could not make such application. It is also to be noted that the respondents, company had given Power of Authority to the Factory Manager Shri D.B. Roongatha to enable to apply for all licences etc.

for Century Enka Ltd. 8. The two premises in question clearly constitute two totally separate factories which have been separately registered. In the case of CCE v. Broach Textile Mills Ltd. 1998 (79) ECR 411, the Tribunal has held that the registration cannot be denied to separately registered premises, which function as two different factories. The contention of the Revenue that the respondents put up a fence for creating the new factory for the sole purpose of wrongly availing the benefit of Notification No. 6/2000 and therefore, the respondents' request for separate registration should not have been considered, is not tenable as we have already noted that the respondents have decided to undertake the exercise of separation of factory in Feb. 2000 itself in order to achieve certain efficiencies by creating separate product groups, although the application was filed after the issue of Notification No. 6/2000, and all aspects have been considered by the authorities before granting separate registration for KSF(POY) and amending the existing registration already granted in favour of KSF(PYU) in April 2000. The point raised that in respect of the Pune factory the respondents' application for separate registration had been rejected, is a new ground which neither raised in the show cause notice nor in the order of the Dy. Commissioner and the factual position is that in Pune, there was only one building and, therefore the factory could not be segregated and after the rejection of the application for separate registration, the Pune Unit was closed down in January 2000. Besides, this is not a relevant aspect for the purpose of the issue involved in the present case. All the relevant aspects

have been considered by the lower Appellate Authority in his order and it is therefore, not correct on the part of the Revenue to suggest that the Commissioner (Appeals) has not recorded his finding on all the arguments put forth before him.

9. In the light of the above discussions, we hold that there is no warrant to interfere with the impugned order and accordingly uphold the same and rejected the appeals.

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