

**Special Machines Vs. Cce**

**Special Machines Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/35091](http://sooperkanoon.com/35091)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-28-2004

**Reported in :** (2004)(117)LC731Tri(Delhi)

**Judge :** P Bajaj, M T K.D.

**Appellant :** Special Machines

**Respondent :** Cce

**Judgement :**

1. The appellants are manufacturing welding electrodes and were claiming the benefit of small scale exemption under Notification No.175/86/CE dated 1.3.1986. The allegation against the appellant is that they created three more units namely, (i) M/s. Industrial Products, (ii) M/s. Modern Equipments and (iii) M/s. S.M. Welding Electrodes Pvt.

Ltd. It is alleged in the show cause notice issued to the appellants after completing the investigation that, the said three units do not have any independent manufacturing capabilities and are completely dependent on the appellants unit. The proposal was therefore to club the clearance of all the four units and consequently, it was alleged that the concessional excise duty benefit for small scale units enjoyed by M/s. Special Machines under Notification No. 175/86-CE dated 1.3.1986 was not available to them. Hence duty of Rs. 78,55,951/- was demanded and confirmed against them and penalty of Rs. 5 lakhs was imposed under Rule 173Q. The appellants are challenging the findings contained in the

said order, through the instant appeal.

2. The show cause notice that has been issued to M/s. Special machines and the other three units had twofold proposals. The first part of the proposal was that, since the three units had also used the brand name of Special Machines in respect of Welding Electrodes cleared from their factories, each of the three units was not entitled to duty exemption and a separate duty demand against each unit was also indicated proposing its recovery. However, in the adjudication proceedings, the proposal for recovery of duty from individual units on account of use of brand name was abandoned. The order-in-original confined itself to the proposal of clubbing the clearance of the three units with that of the appellants i.e. Special Machines (S.M.), and seeking duty recovery only from the appellants. The appellant Special Machines is a proprietary firm of which Shri R.M. Jain is the sole proprietor.

3. The details of the various firms which are allegedly inter connected are as follows:Sl.

Name of the Constitution	Date of Constitution	Remarks	No. of firm
--------------------------	----------------------	---------	-------------

Industrial 24.11.1980 R.M.Jain Partnership2.

Modern 1.2.1983 Vitap Jain Partnership3.

S.M. 26.6.1987 Shri Vitap Jain and Pvt. Ltd. Co.

Welding Smt. Deepa Jain Electrodes Directors4.

Perfect 16.1.1990 R.M. Jain & M/s.

Partnership Industries Jain Products (P) Ltd.	firm
---	------

4. No show cause notice has been issued to M/s. Perfect Industries figuring at Sl. No. 4 of the total above. M/s. Perfect Industries do not manufacture welding electrodes. The said unit only manufactures coating powder/chemicals (Flux Powder) which is used for manufacture of welding electrodes.

5. In the order-in-original, the following points have been enumerated in support of the proposal for clubbing the clearances of Special Machines (SM) with those of the remaining three units, namely (i) industrial Products (ii) Modern Equipment and (iii) S.M. Welding Electrodes (hereafter referred to as "three units") i) It is alleged that the special Machines have contravened the provisions of Notification No. 175/86-CE dated 1.3.1986, as they failed to include the clearances of the three units in their clearances and consequently rendered them liable to pay Central Excise duty of Rs. 78.55.951/-.

ii) There is an agreement between S.M. and "three units" for sharing the trade mark of S.M. by others consequent to which brand name is shared by the other "three units".

iii) The four units (S.M. and three units) have common staff or have an arrangement for sharing of staff. The skills of staff employed by one unit are utilized freely in the other units as and when the need arises. The spare capacity of wire drawing in one unit (S.M.) is utilized for manufacturing electrodes in the other three units. The Coating powder or chemicals (Flux Powder) which are produced in one of the sister unit (viz. Perfect Industries) are used by all the four units and the three units do not have independent wire drawing, chemical making and R & D facilities.

iv) The agreement for use of brand name or patent agreement is loosely worded and does not contain adequate protection to the brand name holders (S.M.) against the misuse of the brand name.

v) The three units lack basic facilities. Hence are heavily dependent on Special Machines. The trade mark sharing agreement is an eye wash.

vi) While Trade mark of Special Machine is used by the three units, the three units also manufacture welding electrodes of other sister units.

vii) S/Shree R.M. Jain and Vitap Jain are the main operators and other family members are merely dummies. In other words, the allegation is that all the three units were dummies. Hence the clearances made by the three units are required

to be added to the clearances made by S.M. and hence the case for demanding duty.

6. The appellants have challenged the demands on various grounds.

However, keeping in view the order we are proposing to pass, with reference to the main issue of clubbing the challenge to the duty demand with reference to several other grounds including the ground of limitation, and the ground that approved classification list having not been reviewed etc. are not being examined by us.

7. We note that the appellants have contested the action of the department in clubbing the clearances of M/s. Industrial Products, M/s.

Modern Equipments and M/s. S.M. Welding Electrodes along with the clearances affected by them (M/s. S.M.) to deny them the benefit of small scale exemption under Notification No. 175/86-CE dated 1.3.1986.

9. The appellants have placed reliance on Board's circular to claim that on applying the instructions contained in the said circular there is no case for clubbing.

10. We have perused the Board's circular cited in support of the submissions. The circular No. V(30)379/T-II/92/26815 dated 26.11.1992 clearly lays down the guidelines at Sl. No. (iv) to the effect that: Limited companies, whether public or private, are separate entities, distinct from the shareholders composing it. Hence each limited company is a manufacturer by itself and will be entitled to a separate exemption limit.

10.1. As it could be seen from the composition of four units involved in the dispute, it is obvious that the appellant is a proprietary firm while the two units out of three are partnership firms while the third unit is a limited company. The composition of individuals is not identical in any of the firms, though one of the partners may be common in the other firm. The issue regarding independent nature of two partnership firms having one or some of the common partners has already been settled and also taken note of in the Board's circular. Therefore, on the mere

ground of composition of the firms comprising of common partners or the same individual figuring in the capacity of the Director on one firm and partner in the other cannot be a ground to treat three companies as part of the appellant's company.

11. On going through the allegations leveled in the show cause notice on the basis of investigations and the evidence brought on record, it is noted that the proposal for clubbing is based, solely on the grounds that the three units are situated within the vicinity of the appellants unit, there is very flexible/loose arrangement relating to deployment of staff from one unit to the other. The R & D facility of S.M. is being freely used by the other three units as also the wire drawing capacity. The chemicals or coating powder (Flux Powder) for making welding electrodes are supplied by another sister company i.e. M/s.

Perfect Industries, to all the four units. All these grounds are enumerated to suggest that all the three units are so heavily dependent on the appellants (S.M.) that they cease to have an independent existence. The brand name of S.M. is also being used by the three units.

12. So far as these objections are concerned, we note that these grounds are not adequate to consider clubbing of the clearances of the three units with that of S.M. (Appellants).

13. So far as the use of brand name is concerned, the Tribunal in the case of M/s. Swastic Engineering Works v. CCE has held that there can be no objection for use of brand name, if the brand name users pays the royalty to the brand name owner. The said judgment also holds that use of common facilities and staff is also no bar against availment of exemption by individual units.

This decision has been followed subsequently in several cases.

Therefore, following the ratio of the said judgment, we hold that the objection for use of common brand is no ground for considering case for clubbing. The department's only objection is that, royalty agreement is loosely worded and contains no adequate protection to the brand owner (S.M.). However, this ground

cannot go against the appellant since the agreement for payment of royalty exists and has not been revoked. We also find that, the Tribunal has relied upon the judgment of the Hon'ble High Court of Rajasthan in the case of Renu Tandon v. UOI in dealing with the similar situation to hold that clubbing is not permissible unless there is an evidence of financial flow back. The Judgment is in the case of CCE, New DelhiBentex Industries v. CCE New Delhi more or less similar view has beenPoly Printers v. CCE Delhi, it has been held by the Tribunal that concept of 'related person' under erstwhile Section 4(4)(c) of Central Excise Act 1944, is not applicable for the purpose of clubbing of clearances to deny exemption. Therefore, we hold that, the law pronounced in the said judgment is squarely applicable to the facts f the instant case. Hence, we are unable to uphold the impugned order passed by the Commissioner to club the clearances of the three units with that of the appellant's unit.

15. Accordingly, the appeal succeeds and the same is allowed with consequential relief, in accordance with the law.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**