Panetrical Engg. Vs. Cce

Panetrical Engg. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/38436

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-11-2005

Reported in : (2005)(186)ELT120Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Panetrical Engg.

Respondent : Cce

Judgement :

1.1 These appeals arising out of the same order are being disposed by this common order.

1.2 M/s. Panetrical Engg. Pvt. Ltd. (herein after referred as PEP for short) is a Private Limited Company with Directors Mr. Vivek Bolinjkar and Mr. Lokhande. They are engaged in the manufacture of Parts of Motor Vehicles. They have two units, i.e. at 34B Balaji Industrial Estate, Akurli Road, Kandivli(E), Mumbai and other one at Gala No. 1, Singh Estate, Road No. 3, Kandivli (E), Mumbai.

1.3 M/s. Zenith Engineering (herein after referred to as Zenith) is a role proprietary concern of Mrs. M.V. Bolingkar having its factory at Gala No. 3, Singh Estate, Road No. 3, Kandivli(E), Mumbai.

1.4 A sole proprietary concern of Mrs. Arti P. Jani situated at 3/8, Metal shipping centre, Malad (W), Mumbai named as M/s. Pradanaya Engineering (herein after referred to as Pradanay for short).

1.5 These three concerns were engaged in the manufacture of Motor vehicle Parts. While Pep was Registered with Central Excise Department and following all formalities; Zenith is what is called as Declarant units and had filed the required Declaration with the department under notfn 13/12 CE.1.6 On a visit to M/s. PEP on 21.1.89, the officer found a challan cum Invoice of Zenith and Pradanya. They conducted enquires and a notice was issued on 30.04.2001, proposing clubbing of the production of the three units and deny SSI exemption to them and recover duty from PEP and impose penalties. The notice confirmed the duties imposed.

Penalties on PEP and Shri. Bolinjkar, & Shri. S.K. Jain and other CCE (A) set aside penalties of Zenith and Pradanya and confirmed the duty demand and penalties as appellants herein after finding - "i) the entire production and clearance allocated in the name of the three separate firms were managed by Mr. Vivek Bolinjkar, Managing director of Appellant Company.

ii) investigation reveals that challan-cum-invoice book of M/s.

Pradnyas and bill book of M/s. Zenith were found in the drawers of Mr. Prakash Jani, Supervisor of Appellants and Mr. Jani admitted that M/s. Pradnya was a dummy unit having no factory, workers and staff and only bills were raised; while Mr. Vivek Bolinjkar admitted that M/s. Zenith is located in the same gala and no machinery or records were available and that Mr. Zenith was created in the name of his wife to divert some manufacture in its name and accordingly bills were essential.

iii) The adjudicating Authority has looked into other corroborative evidence like physical boundaries, existence of machinery for manufacture of goods, electricity consumption, etc and confirmed dummy status of these firms through a speaking order.

iv) various case laws cited have to be looked into based on the facts of the present case as M/s. Pradnya is operating from a residential premises and no evidence of any manufacture found in this premises by use of any machines, etc: M/s. Zenith was a small gala and no machinery was installed there: No evidence of purchase and installation of machinery filed and no records of daily production also maintained. Mrs. Bolinjkar was entirely unaware of the purchase of materials and financial transactions; when evidence of purchase and installation of machinery and other documentary evidence of manufacture were not revealed till adjudication stage, it cannot be accepted at appellate stage: v) separate registration with Govt. agencies or separate regulating their finance do not establish separate existence: M/s. Zenith and M/s. Pradnya were created only on paper and these were dummy units: vi) duty demand has to be reworked out after allowing cum-duty concept and penalty Under Section 11AC has also to be reworked out accordingly; vii) Mr. Bolinjkar and Mr. Jani are the persons involved in the day to day activities and, hence, penalty upon them is maintained; viii) Mrs. Bolinjkar and Mrs. Jani were not involved in the day to day activities of the firms floated by their husbands, penalties on them is set aside." a) the entire premises for confirmation of the demands is the statement of Shri. Bolinjkar and Shri. Jani which are retracted. The plea of a confession and suppression of Retractions made on threat to harass ladies, is a reason which Revenue cannot wish away, it has to be demolished on very strong corroborative material, especially when read in context of the separate existence and acceptance of separate manufacturer status by the other Government Agencies and no enquires made with the common buyer of the Motor Vehicle parts i.e.

M/s. Mahindra and Mahindra who, it is stated, had placed Purchase & Supply orders on the three units separately. The lower authorities in this view of the matter could not have rejected the retraction affidavits filed by the appellants herein. These should have been considered and a finding arrived. Non consideration, only exhibits a bias or and closed mind, which cannot sustain an order required from the authorities after application of mind in an unbiased manner.

b) The Panchanama as drawn is being questioned and independent material was required to be brought on record to establish the contents of the same. The non-consideration of request to visit the factory as made on various dates to the authorities show a closed mind and a desire not to take defense explanations in consideration.

Orders emanating with such back ground are to be struck down.

c) documents on purchase/procurement of machinery produced have been brushed aside and not considered. Registration independently has been granted to Zenith by the Central Excise officers after enquiry and now that is being questioned, without bringing out any misdeclaration non declarations, on part of Zenith. Zenith & PEP come under the jurisdiction of the same Proper Officer of the Central Excise Range, and After accepting them to be independent, Zenith cannot be called a dummy of PEP. d) PEP is a Private Limited Company with two Directors, having its own machinery and existence. Its independence is not being questioned.

e) M/s. Zenith is a sole proprietary concern of Mrs. M. Bolinjkar, who happens to be the wife of one of the Directors of PEP. It was started in 1995, was purchased by the Proprietor and shifted to its now address at Gala No. 2, Single Estate, Kandivli (E) which is adjacent to unit No. 2 of PEP, that by itself cannot be construed to make it a dummy of the Private Limited Company i.e. PEP. They have filed necessary declarations with the same Range officer as of PEP. The department is well aware and accepts its independent status and has granted it separate registration. It is also registered as a separate entity with other Central and State Government Departments.

The statements made by the proprietory have been conveniently ignored by the adjudicators. Likewise Pradanya is another proprietary concern of Mrs. Arti Jani wife of a Supervisor of PEP. It was started in 1995, from a rented premises, they are registered under Shop and Establishment Act. They possess hand operated machinery and send out, on job work, the products requiring working by Power operated Machines. The dummy nature of Pradanya and Zenith therefore cannot be upheld in the facts of the case.

f) the aspect of notfn. 83/94 CCE dated 11.04.94 and 84/94 CCEx 11.4.94 benefits being available to the declarant and S.S.I units for getting part full job done elsewhere has been totally ignored by the lower authority and investigators. They have been led to believe that 'job work' benefit was not available to such units or have conveniently omitted to enquire into and consider that aspect when job work was being claimed. These notifications breach the bottom from the Revenue's case of no machinery being available with Zenith and or Pradanya and the entire manufacture being done in & of PEP. There is nothing suspect or amiss about challans of Zenith or and Pradanya being found in the drawers of Mr. Jani at PEP premises" along with Invoices, as final job work material received at PEP from Zenith and Pradanya could have been cleared on invoices of Zenith & Pradanya kept from PEP. This submission of the Ld. Advocate for benefit of the notification has force and would exonerate PEP from the owes duty demand made of being the manufacturer of goods, under job work as they are exempted under notification such 83/94 and 84/94 being job work of Zenith & Pradanya as claimed. In any case, this line of investigation was not being logically pursued and enquired. This exhibits a serious lacuna in the investigation and calls for setting aside the order impugned i.e for clubbing all clearances for purpose of duty in the hand of PEP, when exemption under statutory Notification for job work of Zenith and Pradanya goods is not considered by the investigator and the adjudicator.

Explanation for Job work under notfn 83/94 & 84/94 reads as follows - "for the purpose of their notfn, the expression "job work means processing of or working open raw material or semi-finished good supplied to a job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process and the expression "job worker" shall be constructed accordingly".

This would permit goods (raw material/ semi finished/ unfinished / fully finished) to be sent for job work to PEP via or direct form Zenith and like wise from Pradanya, and goods so manufactured on job work would be fully exempted from duty cannot be charged to duty under the SSI notification by reducing the value in the exemption status of each one of the units i.e. Pradanya, Zenith and PEP. The non compliance of procedural aspects if any, as urged, cannot deny the grant of benefit of the notification, is well settled in the case of other "job work" notifications eg 214/86 (see Commr v. Nestle India Ltd -2002(150) ELT 741 Trib) and Venus Polytex Pvt Ltd (2001 (136) ELT 291), following this settled position, we find no reason to load on to the exemption stats of PEP the clearance of "job work" of Pradanya and Zenith and order recovery of duty on the same, as proposed is this case and demanded from PEP. h) Since penalty has not been arrived at on the ground of failure of intimation being filed under notfns 83/94 or 84/94, the penalty on PEP as imposed cannot survive since no duty liability is being upheld. Penalty under Section 11AC read with 173Q as ordered is to be set aside. Penalties on the proprietary firm are set aside by CCE (Appeals). Penalty under Section 11AC read with Rule 173Q is also not upheld as such joint penalty cannot be upheld following - When no duty demand is being upheld, no penalty under Rule 209A is called for or to be upheld.3. In view of the findings, the order is set aside and the appeals are allowed.