

**Makers Development Services (P) Vs. Collector of Central Excise**

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

**Decided On :** Nov-02-1987

**Reported in :** (1988)(15)ECC1

**Appellant :** Makers Development Services (P)

**Respondent :** Collector of Central Excise

**Judgement :**

1. The appellants M/s. Makers Development Services (P) Ltd. purchased the mini cement plant of M/s. Associated Cement Co. Ltd. (ACC Ltd.) on 29-4-1982. The registers of M/s. ACC Ltd. showed a balance of stock of 1084.89 MT of cement as on that day. The issue in the present case relates to the liability of the appellants to pay duty on that quantity. The case for the appellants before the lower authorities was that the said stock is practically in the nature of dead stock since the said quantity was at the bottom of the silo and could not be removed since the delivery point is at a height of about 3 metres above the bottom of the silo. They further contended that in any event the liability for payment of duty on that quantity should be on the manufacturers thereof (M/s. ACC Ltd.) only and the same could not be recovered from the appellants. It may also be noted at this stage that 'duty payable by M/s. ACC Ltd. would be at Rs. 135/- per MT. While the duty payable by the appellants on the cement manufactured by them would be at Rs. 100/- per MT. The Assistant Collector under his order dated 27-6-1983 rejected the contentions of the appellants and confirmed the demand of Rs. 1,46,460.15 paise on the above said quantity. On appeal the Collector (Appeals) under his order dated 9-5-

1985 set aside the said order and remitted the case to the Assistant Collector for fresh adjudication to find out whether the so-called dead stock at the bottom of the silo would not be removable or whether the stock at the bottom would also be removed now and then and also whether duty liability would be at Rs. 100/- per MT or Rs. 135/- per MT. It is against the said order that the present appeal has been preferred.

2. We have heard Shri M. Chandrasekharan, Advocate for the appellants and Shri Balbir Singh, SDR for the respondent.

3. From the show cause notice dated 8-10-1982 it is clear that duty of Rs. 1,46,460.15 paise was being demanded from the appellants with reference to 1084.89 MT of cement manufactured by M/s. ACC Ltd. before 29-4-1982, the said quantity admittedly being mentioned in the transaction of sale as part of the property sold to the appellants. The main contention of Shri Chandrasekharan is that when it is admitted that the said quantity of cement has been manufactured by M/s. ACC Ltd. there can be no question of seeking to recover from the appellants the duty payable on the said quantity. In support of this contention he relies on several decisions. They are : It has been laid down in the above decisions by several High Courts that the liability for payment of excise duty would always be on the manufacturer only and not on the purchaser of the manufactured articles. It has also been pointed out in some of these decisions that the duty liability could always be enforced by proceeding against the manufactured product. In the present instance the Department has not chosen to proceed against the goods but only against the appellants. We may note that the above position as to liability of the manufacturer only has been recently reiterated by the Calcutta High Court in the case of the Statesman [1987 Vol. 31 ELT 3 (Calcutta)].

4. The Assistant Collector has proceeded on the basis that since the manufactured goods (on which the duty was now being demanded) had been purchased by the appellants as the part of the stock, when they purchased the factory, they were liable to pay the duty thereon. The Appellate Collector has not disagreed from this, since the remand by him was only for the purpose of verifying whether the goods manufactured by the ACC could have been removed and thereupon quantifying

the duty. Thus the case for the Department, as urged before us by Shri Balbir Singh also, is that since under the contract of purchase the appellants had purchased the manufactured goods they are bound to discharge the duty liability also thereon. The argument evidently is that as the factory had been purchased with all its assets and liabilities this liability of payment of excise duty on the manufactured goods (purchased as stock in hand) was on the appellants.

It may be true that the appellants had undertaken, as part of their purchase agreement, the liability to pay the excise duty on the goods already manufactured but not yet removed. That would not mean that the Department would be entitled to enforce that liability as arising under that agreement. The agreement in respect of that liability was between the appellants and M/s. ACC Ltd. If, subsequently, contrary to the terms of the agreement, the appellants do not discharge that liability and M/s. ACC Ltd. are compelled to discharge that liability it may be open to M/s. ACC Ltd. to seek recovery of the said amount through the civil court from the appellants in pursuance of the sale agreement between them. This would not mean that the Department would be equally entitled to step into the shoes of M/s. ACC Ltd. and seek recovery of that amount by taking proceedings under the Central Excises and Salt Act. On the question whether it may perhaps be open to the Department to seek recovery of this amount directly from the appellants by instituting a civil suit, we offer no opinion. At all events we are clear that the Department has no right to recover the amount from the appellants by taking proceedings under the Central Excises and Salt Act since, as already stated, the liability enforceable under the said Act would be on the manufacturer (and the goods) only i.e. M/s. ACC Ltd. and not the purchaser (that is) the appellants.

5. This is not a case where a manufacturing firm, as a firm, is taken over by another firm, which continues to run the manufacturing firm in its original name but is managed by the new firm. In that event the manufacturing firm continues to function, though under a new management. The liability for duty in respect of the pre-take-over manufactures could, in that case, be enforced against the new management also, since the firm continues to function, though under a new management. The present case is not one such. It is one where the factory (and also stock) is purchased by the appellants and the manufacturing activity is

thereafter carried on by the new firm as a distinct legal entity, different from the original firm. The Appellants are not a continuation of the original manufacturer (ACC).

6. In view on the above conclusion it is unnecessary to consider other submissions as to whether the goods could be physically removed; or in fact have been removed; the rate of duty etc. Accordingly, we allow this appeal and set aside the orders of the lower authorities.

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