Collector of Central Excise Vs. Vxl (India) Ltd. and anr.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-06-1987

Reported in : (1988)(15)ECC41

Judge : V Raghavachari, K P Anand

Appellant : Collector of Central Excise

Respondent : Vxl (India) Ltd. and anr.

Judgement :

1. The respondents to these appeals as shown in the memorandum of appeal are M/s. Shree Digvijay Woollen Mills Ltd., and the Oriental Carpet Manufacturers (India) Ltd. So far as M/s. Shree Digvijay Woollen Mills Ltd. are concerned, it appears that they are now known as VXL India and, as evidenced by the fresh certificate of incorporation (consequent on change of name) issued by the Registrar of Companies.

Hence the cause title has been directed to be amended to show the above name. Of the 4 appeals 3 relate to M/s. VXL India Ltd. and the other to M/s. Oriental Carpet Manufacturers (India) Ltd. 2. M/s. Shri Digvijay Woollen Mills Ltd. filed classification list claiming exemption under notification No. 198/76-CE dated 16-6-1976 and in that connection filed a declaration for determination of base period and base clearance. Acting on the figures so furnished the classification list was approved granting the exemption claimed. The base period was determined as 1975-76 and the base clearance was fixed at nil. Clearances were being effected in terms thereof from August 1977 to the end of March 1979. On 25-7-1978, the Assistant Collector came to be of the view that the approval so granted was not proper and the same should be revoked and differential duty should be recovered from August 1977 onwards. The basis therefor was that even prior to August 1977 M/s. Shree Digvijay Woollen Mills were getting wool tops manufactured for them in other factories and that clearances thereof should also be taken into account in approving the classification claimed and allowing exemption. Following the adjudication, he revoked the exemption earlier granted and confirmed two demands raised. These were under orders dated 12-2-1981 and 13-2-1981. Under another order dated 13-2-1981 the Assistant Collector further held that in respect of a later period, when M/s. Shree Digvijay Woollen Mills Ltd., were themselves directly engaged in the manufacture of wool tops, they had manufactured such wool tops for M/s. Oriental Carpet Manufacturers (India) Ltd. and that in respect of these wool tops, it was M/s. OCM that were the actual manufacturers and not M/s. Shree Digvijay Woollen Mills Ltd. Accordingly, he confirmed the demand (within the normal period of limitation) in respect of duty payable by M/s. Oriental Carpet Manufacturers (India) Ltd. 3. M/s. Shree Digvijay Wollen Mills as also M/s. Oriental Carpet Manufacturers (India) Ltd. appealed against the said orders. The Collector, Central Excise (Appeals) under his order dated 27-5-1982 allowed the appeals. He held that for the period prior to August 1977 M/s. Shree Digvijay Woollen Mills (to be called hereafter DWM in short) could not be termed to be manufacturers and, therefore, the fixation of base clearance and base period earlier had been correctly done and that the subsequent cancellation thereof and the consequent confirmations of the duty demands were not correct. In respect of the later period he held that it would be DWM that were the actual manufacturers and not OCM. It is against the above said order that these four appeals have been preferred by the Collector of Central Excise, Ahmedabad.

4. We have heard Shri K.C. Sachar for the appellant-Collector and Shri N. Khaitan, Advocate for all the respondents.

5. There is no dispute that during the period prior to August 1977 M/s.

DWM were not directly engaged in the manufacture of wool tops and that they were supplying raw material to three units by name Raymond Wollen Mills, Wool Commerce of India and Modella Wollen Mills who were manufacturing wool tops on receipt of job charges therefor. The wool tops so manufactured were being received by M/s. DWM for further manufacture of other products. There is also no dispute that subsequent to August 1977 M/s. DWM began to directly engage themselves in the manufacture of wool tops and during the said period they were receiving raw material from M/s. OCM and that the said raw material was being converted into the wool tops and returned to M/s. OCM, job charges being received by M/s. DWM in that connection. The question is whether such manufacture of wool tops by the 3 units out of raw material supplied by M/s. DWM made M/s. DWM the manufacturers of the said wool tops and similarly in respect of the later period M/s. OCM were the manufacturers.

6. Reliance is placed by the appellant on the decisions of the Supreme Court in the case of Shree Agencies (1977) ELT-J 168 and Bajrang Gopilal Gajabi in suppprt of the above contention.

Shri Sachar further referred us to the judgment of this Tribunal in the case of M/s. Guru Instruments [1988] 15 ECC-T 28 : (1987) Vol. 27 ELT 269. This judgment of the Tribunal followed the abovecited decisions of the Supreme Court. On the other hand, the contentions for the respondents are that the facts established in the cases before the Supreme Court were entirely different from the facts of the present case and hence, the ratio of the said decisions would not apply to the facts of the instant case. They contend that the 3 units which actually manufactured the wool tops in the period before August 1977 were independent licensed units, the transactions between them and M/s. DWM being on principal to principal basis, the consideration for the manufacture being receipt of job charges and that DWM had no manner of supervision over the work of the said 3 units and in the circumstances the mere fact that M/s. DWM supplied the raw material and received back the mauufactured product would not make them, and not the other 3 units, the actual manufacturers. Shri Khaitan cited and relied on the decision of this Tribunal in Multi Trade Overseas Corporation in support of this contention. He contends that, similarly, for the period after August 1977, M/s. OCM, who merely supplied the raw material and entered into the contract with M/s. DWM for conversion of the raw material into wool tops on receipt of job charges could not be said to be the actual manufacturers, since the transaction between the two was on principal to principal basis without any supervision on the part of M/s. DWM in the actual manufacturing process by OCM (sic).

7. A series of earlier decisions on this issue had been considered by this Tribunal in the case (supra) and, on an analysis of the said earlier decisions, it had been held that a raw material supplier would not, for that reason, become the manufacturer of the processed product even if the processing may be done to his specifications, with a right of rejection also, unless it is established that the processor was a mere dummy for the raw material supplier and the alleged agreement for receipt of conversion charges was a mere make-believe, the transaction between the two not having been on principal to principal basis.

8. In the two cases before the Supreme Court, the issue was the eligibility for benefit under a notification dated 1-3-1956, as amended from time to time. The appellants in the said two cases claimed benefit under the notification, alleging that they were selling yarn to the various power loom owners from whom they were subsequently purchasing the cloth on payment of the price therefor and thus it was only the power loom owners that were the actual manufacturers, the two appellants being the sellers of the yarn and purchasers of the fabrics.

In both the cases the department, on a scrutiny of all the facts, concluded that the alleged sale of the yarn and the subsequent alleged purchase of the fabrics were mere make-believe transactions, in order to make out a case as if the power loom owners were the actual manufacturers of the fabrics out of their own yarn. From the judgment of the Supreme Court in the Shree Agencies case it is seen that the Assistant Collector held that he was unable to agree with the contentions of the appellants that they had ceased to employ looms from the additional loom factories after December 1956. It is, therefore, clear that the findings of the departmental authorities in that case were that the very looms were taken over by the appellants and that the services of the power loom owners were being engaged by the appellants as hired weavers for conversion of yarn of the appellants into fabrics, weaving charges alone being paid to the owners. The facts in the Bajrang Gopilal Gajabi case were also the same. Thus in both the cases the findings of the lower authorities, with which the High Court refused to interfere in writ proceedings (and which decision of the High Court was upheld by the Supreme Court), were that the persons who converted the yarn into fabrics were but the hired labourers of the appellants. It is in these circumstances that it was held in the said cases that the actual manufacturers were the appellants and not the power loom owners.

9. So far as the present cases are concerned, the facts are that in the pre as well as post August 1977 periods, the suppliers of the raw material (DWM in the earlier period and OCM in later period) had entrusted the work of conversion of the raw material into wool tops under agreements entered into on principal to principal basis without the raw material supplier having any supervision or control over the actual work of the other, the consideration for the contract being receipt of conversion charges. In the circumstances, we are satisfied that following the ratio in the Multi Trade Overseas Corporation case (supra), we have to uphold the findings of the Collector (Appeals).