

Modern Industrial Enterprises Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-2005

Reported in : (2006)(193)ELT513TriDel

Judge : S Kang, Vice-, M T K.C.

Appellant : Modern Industrial Enterprises

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellants filed these appeals against the common adjudication order passed by the Commissioner of Central Excise.
2. The brief facts of the case are that on 22-9-2001 premises of M/s.

Modern Industrial Enterprises, A-58, Mangolpuri Industrial Area, Phase-II, New Delhi (hereinafter referred to as 'MIE') and of M/s.

Florida Electrical Industries Ltd., B-147, Mayapuri Industrial Area, Phase-I, New Delhi (hereinafter referred to as 'FEIL') were searched by the officers of Revenue. The premises of dealers were also searched and during search certain private records were recovered from M/s. MIE and also from the premises of M/s. FEIL. On the basis of private record recovered from the premises, a show cause notice dated 25-3-2003 was issued by the Commissioner of Central Excise, Delhi-I demanding duty of Rs. 1,65,64,008/- in respect of the goods manufactured and cleared by M/s. MIE and M/s. FEIL without payment of Central Excise duty and for

appropriation of Rs. 30 lakhs deposited by appellant during the investigation. Show cause notice also proposes the imposition of penalties on the firm as well as on the individuals. The adjudicating authority confirmed the demand of Rs. 94,41,485/- in respect of the goods manufactured and cleared by M/s. MIE and an amount of Rs. 71,22,523/- in respect of the goods manufactured and cleared by M/s.

FEIL without payment of duty. The adjudicating authority also appropriate the amount already deposited by the appellant. Personal penalties were also imposed on the firm and as well as on the individuals. .

3. The contention of the appellant is that a combined show cause notice was issued on 25-3-2003 by Commissioner of Central Excise, Delhi-I to M/s. MIE and M/s. FEIL. On that day factory of M/s. FEIL was not within the jurisdiction of Commissioner of Central Excise, Delhi-I but the same was under the jurisdiction of Commissioner of Central Excise, Delhi-II as per the Notification No. 14/2002-C.E.(N.T.), dated 8-3-2002. The contention is that on 25-3-2003 on the date of issuance of show cause notice, the Commissioner of Central Excise, Delhi-I has no jurisdiction to issue show cause notice to M/s. FEIL which is outside the jurisdiction of Commissioner, Delhi-I hence the show cause notice is void as having been issued by an officer which not authorized to do so. The appellant relied upon the decision of the Tribunal in the case of Godrej Soaps v. CCE 4. The contention of the appellant is that during the personal hearing before the Commissioner of Central Excise, Delhi-I raised the issue of jurisdiction on 15-10-2003 and thereafter the Board of Central Excise & Customs issued an Order No. 1/2004 whereby the Commissioner of Central Excise, Delhi-I was authorized to adjudicate the case in respect of the show cause notice dated 25-3-2003. This authorization is prospective in nature and does not empower to the Commissioner, Delhi-I to issue notice to the unit which is outside the jurisdiction. This authorization is to adjudicate the case in respect of show cause notice dated 25-3-2003. The contention is that when show cause notice is without jurisdiction hence this authorization will not help the case of Revenue.

5. On merits, the contention of the appellant is that the adjudicating authority in the impugned order neither identified the goods manufactured by M/s. MIE or manufactured by M/s. FEIL. In the show cause notice the duty was not quantified in respect of the each manufacturer individually whereas in the impugned order the adjudicating authority without any cogent evidence demanded duty of Rs. 94,41,485/- from M/s. MIE and duty of Rs. 71,22,523/- from M/s. FEIL.

The contention is that in Para 62 of the adjudication order, the adjudicating authority admitted the fact that it is not possible to arrive at the value of clearances separately, therefore, the duty is to be quantified after taking into consideration the previous clearances of M/s. MIE and M/s. FEIL in the ratio of 57:43. The contention of the appellant is that as there is no evidence on record to show separately the receipt of the raw material by both the units and their manufacturers of the excisable goods and clearance of the same without payment of duty, therefore, the impugned order is not sustainable. The appellant relied upon the various decisions of the Tribunal in support of their submissions that duty is not to be confirmed merely on the basis of assumption and consumption in absence of direct evidence on record. The contention of the appellant is also that the evidence relied upon by the adjudicating authority, the impugned order the kachha Slip No. 69, dated 8-9-2002 wherein an amount of Rs. 20,000/- has been shown against the name of One Sh. Agarwal whereas in the ledger the credit amount was shown as Rs. 2200/- only. The contention of the appellant is that the demand is confirmed on the ground that this 20,000/- mentioned in the private record is the trade discount given to the dealer, therefore, the clearance was assumed on the basis of the amount of trade discount which is not permissible. The contention of the appellant is also that as per the statement of Shri C.V. Mathew, Accounts Officer of M/s. FEIL, the M/s. Modern Electrical is a fictitious firm and the invoices of M/s. Modern Electrical were used for the clearance of goods manufactured by M/s. FEIL. The contention is that as M/s. FEIL is not within the jurisdiction of Commissioner of Central Excise, Delhi-I who issued the show cause notice, therefore, this evidence cannot be relied upon to confirm the consolidated demand against M/s. FEIL and M/s. MIE. The contention is that there is no evidence produced by the Revenue to show the receipt of unaccounted raw material out of which the excisable goods were manufactured and cleared without payment of

duty, therefore, the demand is not sustainable.

6. The contention of the Revenue is that when the officers visited the premises of M/s. MIE and M/s. FEIL both the units were under the territorial jurisdiction of Commissioner of Central Excise, Delhi-I and investigation started and combined show cause notice was issued on 25-3-2003 by Commissioner of Central Excise, Delhi-I to both the units.

The contention is that thereafter the board issued an Order No. 1/2004 in the year 2004 authorised the Commissioner of Central Excise, Delhi-I who adjudicate the case, therefore, the Commissioner of Central Excise, Delhi-I has the jurisdiction to adjudicate the case in respect of the demand from M/s. FEIL. The Revenue relied upon the decision of Karnataka High Court in the case of Raletronics Ltd. v. Union of India to submit that the Collector of Central Excise has jurisdiction to cause an investigation to be held outside his territorial jurisdiction when cause of action arises within his jurisdiction. The contention of the Revenue is that the adjudicating authority given several opportunities to the appellant to submit their volume of clearance from each unit separately for the relevant period.

In spite of these opportunities, the appellant failed to submit the necessary information, therefore, Commissioner of Central Excise rightly taken into consideration the percentage of earlier clearances by both the units and fixed the liability in respect of demand.

7. We find that the appellant challenged the jurisdiction of Commissioner of Central Excise, Delhi-I who issued show cause notice in respect of M/s. MIE and M/s. FEIL. We find that M/s. Modern Industrial Enterprises (MIE) is a proprietary concern which is engaged in the manufacture of ceiling fans, exhaust fans and other type of fans whereas M/s. Florida Electrical Industries Ltd. (FEIL) is a public Ltd. company and engaged in the manufacture of ceiling fans, exhaust fans, geyser, convectors and electric fittings. The show cause notice was issued on 25-3-2003 whereas the territorial jurisdiction of Commissioner of Central Exrise, Delhi were bifurcated by virtue of Notification No. 14/2003 dated 8-3-2002 with effect from 1st November 2002. We find that the Tribunal in the case of Trade and Industries Ltd. v. Collector of Central Excise reported in 2001 (136) E.L.T. 767

held that the Commissioner of Central Excise has no jurisdiction to issue a show cause notice in respect of the manufacturing activity undertaken outside the territorial jurisdiction of Commissionerate. The Tribunal in the case of I.T.I. Equatorial Satcom reported in 2001 (136) E.L.T. 156 set aside the order whereby the duty was demanded in respect of erection/installation of micro earth stations at various cities all over the country by the Collector of Central Excise, Bangalore by holding that Collector of Central Excise have no jurisdiction to issue a demand in the case of those cities which were beyond the geographical jurisdiction of the said collectorate even if such installation held to be amount to manufacture.

8. The Revenue relied upon the decision of Raletronics Ltd. v. Union of India (supra) in support of their contention that the Commissioner of Central Excise, Delhi-I has the jurisdiction to issue the notice to M/s. FEIL which is outside the geographical jurisdiction of the Commissionerate. We find that in the case of Raletronics Ltd., the Commissioner of Central Excise under whose jurisdiction the manufacturing activity is being undertaken by the manufacturing company issued a show cause notice to the manufacturing company as well as to the other assesseees who abetted in evasion of the Central Excise duty.

In such situation, the Hon'ble High Court held that the Commissioner of Central Excise under whose jurisdiction the manufacturing company is a jurisdiction to issue show cause notice to the other assesseees who were connected with the manufacturing activity of manufacturing company. The facts of the present case are different. M/s. MIE and M/s. FEIL both are independent manufacturing units one is proprietor and other is public Ltd. and M/s. FEIL is outside the jurisdiction of Commissioner of Central Excise, Delhi-I. The Revenue relied upon the CBEC's Order No. 1/2004 this order is issued in the year 2004 whereas the show cause notice issued on 25-3-2003 demanding duty from M/s. MIE and M/s. FEIL.

On 25-3-2003 M/s. FEIL was outside the territorial jurisdiction of Commissioner of Central Excise, Delhi-I. The Revenue had not produced any evidence to show that the Order No. 1/2004 is retrospective in nature and also authorized the Commissioner to issue show cause notice.

Further we find this order only authorized the Commissioner, Delhi-I to adjudicate in respect of show cause notice dated 25-3-2003. The issue before us whether on 25-3-2003 Commissioner, Delhi-I was authorized to issue show cause notice to a manufacturing unit which is not the jurisdiction of Commissionerate. In these circumstances, we find force in the arguments of the appellant that on 25-3-2003 when a combined show cause notice was issued to M/s MIE and M/s. FEIL, the Commissioner of Central Excise, Delhi-I has no jurisdiction to issue show cause notice demanding duty from M/s. FEIL as this unit was outside the jurisdiction of Commissioner, Delhi-I.9. As the Commissioner of Central Excise, Delhi-I has jurisdiction to issue the show cause notice to M/s. MIE which is under the jurisdiction of Delhi-I, therefore, we find no force in the arguments of the appellant that the show cause notice is also void in respect of demand from M/s. MIE. In these circumstances, we proceed in respect of the demand confirmed on M/s. MIE.10. In the impugned order, the Commissioner of Central Excise in Para 62 held as under :- In the present case, I find that both the noticee manufacturers were manufacturing the same goods with the same Brand name i.e., 'MIE' owned by one of the noticee manufacturer M/s. Modern Industrial Enterprises. As per the requirement of the buyer the goods were clandestinely removed either from M/s. Modern Industrial Enterprises or M/s. Florida Electrical Industries Ltd. as stated by their dealers also in their statements, without maintaining any statutory record other than the private pocket ledger maintained by Sh.

Subhash Tuteja. The party had been given several opportunities to identify the volume of clearance from both the units separately for the relevant period. Despite the opportunities for calculating the clearance value separately the parties did not ascertain the clearance value of their units separately. In view of the practice, of not accounting the raw material as well as the finished goods to clear the goods clandestinely without payment of duty followed by the noticee manufacturers, it is not possible to arrive at the value of clearances separately. The revenue cannot be held to ransom for want of information from the notices which they are concealing willfully from the department. At this stage, I am left with no option but to quantify the amount of central excise duty evaded on the basis of the recorded clearances effected by the noticee manufacturers from their respective units. The scrutiny of RG-1 for the period 2000-01, 2002-2002 (sic) revealed that M/s.

Modern Industrial Enterprises and M/s. Florida Electrical Industries Ltd. had cleared the goods in the ratio of 57:43 for M/s. MIE and M/s.

FEIL respectively. There is no denying the fact that the requisite information was available with the noticee, because in the absence of the same, it is not possible to divide the payments which were also received in the same office and were recorded in the diary of Sh. Subhash Tuteja, but the party had not submitted the said information. In view of the above fact I am left with no option but to divide the amount of Central Excise duty demanded on the basis of the ratio of recorded clearances of the noticee. Total Central Excise duty demanded vide the above show cause notice is Rs. 1,65,64,008/-from both the noticee manufacturers.

11. In view of the above findings of the Commissioner of Central Excise as the clearances of the goods manufactured by M/s. MIE without payment of duty are not identified separately and the Commissioner of Central Excise further held that it is not possible to arrive at the value of clearances separately. We find that when the duty is demanded from a manufacturer by the Revenue in respect of the goods manufactured which were cleared without payment of duty the Revenue has to prove such goods manufactured by the assessee and the clearances of the such goods was made without payment of duty. It is also found on record both the units are not manufacturing the same goods, therefore, to confirm the demand against M/s. MIE. There should be evidence regarding the procurement of the raw material and manufacture of the excisable goods which were cleared without payment of duty. The appellant relied upon following decisions :-Sangamitra Cotton Mills Pvt. Ltd. v. CC In these cases the Tribunal held that charge of clandestine clearance of goods has to be proved by the department by producing cogent, convincing and tangible evidence and not on the basis of assumption and presumption. As the adjudicating authority in the impugned order in Para 62 held that it is not possible to arrive at the value of clearances separately manufactured by the appellant, therefore, the demand of duty on the ground that appellant cleared goods without payment of duty is not sustainable hence set aside. Appeals are allowed.