

Gillette Diversified Operations Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-12-2007

Reported in : (2007)(121)ECC161

Judge : P Chacko, K T P.

Appellant : Gillette Diversified Operations

Respondent : Cce

Judgement :

1. These appeals are against an order of the Commissioner of Central Excise, wherein an amount of duty of over Rs. 1.30 crores was demanded from M/s. Gillette Diversified Operation Ltd. [GDOL, for short], the appellants in E/657/2004, for the period August 96 to May 1998 in adjudication of show-cause notice dated 31.8.2001, penalty of equal amount was imposed on the said company under Section 11AC of the Central Excise Act and penalties were imposed under Rule 209 of the Central Excise Rules, 1944 on S/Shri Rajeev Tandon, Director of GDOL (appellant in E/660/2004), Vijaya Mathur, Director of M/s. Braun India (P) Ltd. (appellant in E/658/2004) and Ranjit Pratap, Director of Rialto Enterprises (P) Ltd. (appellant in E/659/2004). Under agreements entered into between M/s. GDOL and M/s. Rialto Enterprises (P) Ltd. [REPL, for short], the latter had manufactured a variety of excisable goods out of raw materials procured by themselves with the concurrence of M/s. GDOL, by using machinery maintained by themselves under a lease arrangement with M/s. Braun India (P) Ltd. [BIPL, for short], and supplied such goods to M/s. GDOL, on payment of duty of excise. The said agreements

were these: After examining the terms of these agreements, recording statements from functionaries of the said companies [including the 3 appellants herein) and conducting a scrutiny of the records covering the transactions between M/s. REPL and M/s. GDOL, the department issued the aforesaid show-cause notice for recovery, from M/s. GDOL, differential duty on the goods supplied to them by M/s. REPL under the contract between them, and for imposing penalties on M/s. GDOL and others. This demand was contested by M/s. GDOL on numerous grounds. They submitted that they were not the manufacturers of the goods and that appropriate duty of excisable leviable thereon had been paid by their suppliers viz. M/s. REPL. Without prejudice to this basic contention, M/s. GDOL questioned the valuation of the goods, proposed in the show-cause notice. They also denied penal liability, and so did the other appellants. It was in adjudication of this dispute that the impugned order was passed.

2. After examining the records and hearing both sides, we note that certain essential facts are not in dispute. M/s. REPL and M/s. GDOL are separate and independent companies with separate juristic personality.

M/s. REPL manufactured the goods and supplied to M/s. GDOL on payment of duty of excise under statutory invoices. They also filed returns from time to time. The show-cause notice did not raise any objection with regard to these returns. The manufacture of the goods by M/s. REPL was out of raw materials procured by themselves. The capital goods used for the purpose was lawfully acquired by them under a lease agreement with M/s. BIPL. These facts are not in dispute. It appears from the impugned order that learned Commissioner found a master-hired labour relation between M/s. GDOL and M/s. REPL, in one part of his order. In another part of his order, learned Commissioner considered M/s. REPL to be a shadow of M/s. GDOL. In a third place, he called it a dummy unit.

A finding that M/s. REPL was doing job work for M/s. GDOL can also be seen in the impugned order. We have closely perused the impugned order to get at the reasoning of the adjudicating authority. It appears to us that learned Commissioner took into account certain insignificant facts viz. (a) that M/s. REPL did not use machinery owned by them, and were using machinery leased out to them by M/s.

BIPL, which, like M/s. GDOL, was subsidiary of Gillette India (P) Ltd., a holding-company; (b) that the manufacturing activity was carried out under supervision of personnel deputed by M/s. GDOL; (c) that huge amounts were advanced, interest-free, to M/s. REPL by M/s. GDOL during the period of dispute; and (d) that M/s. GDOL had a say in the determination of job charges and margin of profit in respect of the subject goods. It appears, on the basis of these facts, learned Commissioner held that M/s. GDOL exercised financial, technical and other controls over M/s. REPL. But we have not found any warrant for such a finding. The finding that M/s.

REPL was a shadow or dummy of M/s. GDOL must at once be rejected inasmuch as it is a fact acknowledged by the Revenue that the goods in question had been manufactured by M/s. REPL and cleared by them on payment of duty. What is demanded from M/s. GDOL is differential duty.

Had M/s. GDOL been the manufacturer of the goods, the entire duty on the goods should have been demanded from them. It is a matter of record that M/s. REPL filed RT-12 returns periodically and that there has never been an objection raised in respect thereof by the Revenue. It is also on record that the payment of duty by M/s. REPL was in terms of the Hon'ble Supreme Court's ruling in the case of Ujjagar Prints v. Union of India as clarified in Ujjagar Prints v. Union of India 1989 (39) ELT 493 (SC). By accepting the assessments done by M/s. REPL, the Revenue was virtually recognizing them as a job worker in terms of Ujjagar Prints (supra). If that be so, there is no question of dubbing them as shadow or dummy of anybody. Learned Counsel has cited a similar case of M/s. Indian Shaving Products Ltd., who are said to be another subsidiary of Ms. Gillette India (P) Ltd. (holding-company). In this case, reported as Indian Shaving Products Ltd. v. CCE, New Delhi 2002 (150) ELT 1190 (Tri. Del.), the department issued show-cause notices to the company demanding duty on goods which were manufactured and supplied to them by job workers. The transaction between M/s. ISPL and their job workers was strikingly similar to the one between M/s. GDOL and their job workers in the present case. The Tribunal held, by relying on the apex court's judgments in Ujjagar Prints (supra) and Pawan Biscuits Co. (P) Ltd. v. Collector, that the demand of duty on M/s. Indian Shaving Products Ltd. (principal manufacturer) in

respect of the goods which were manufactured on their behalf by the job workers was not sustainable. The Tribunal's decision cited by learned Counsel was upheld by the Supreme Court vide Commissioner v. Indian Shaving Products Ltd. 2003 (153) ELT A99 (SC). What was upheld by the apex court was the decision of the Tribunal that no duty can be demanded from the principal-manufacturer on the ground of under valuation of goods by their job workers.

3. In the present case, it is the case of M/s. GDOL that their relationship with M/s. REPL was on principal to principal basis and that they had only purchased the goods from M/s. REPL in terms of the sale and supply agreement entered between them. The transaction was a normal commercial transaction and was not in the nature of job work insofar as M/s. REPL were concerned. We have found a valid point for M/s. GDOL. They did not supply any raw material or capital goods to M/s. REPL for the manufacture of the subject goods, nor did they provide work force for the purpose. Deputation of supervisors by them to the factory of M/s. REPL did not make any dent in the commercial nature of the transaction between the companies. M/s. GDOL had nothing to do with the lease arrangement between M/s. REPL and M/s. BIPL in respect of the capital goods. It was lawful for M/s. REPL to hire capital goods and use it for manufacturing excisable goods. That was precisely what they did in this case. Advancing of amounts, interest-free, by M/s. GDOL to M/s. REPL has also been satisfactorily explained by the appellants. The sale consideration payable by M/s.

GDOL to M/s. REPL for the goods in question was adjusted against the amounts advanced. Apparently, learned Commissioner has not attached any importance to this aspect. On the facts of this case, we find that M/s.

GDOL stands on a better footing than M/s. Indian Shaving Products Ltd., the assessee in the case cited by learned Counsel. We are of the view that the demand of duty on M/s. GDOL in the present case is far-fetched. It is without any legal basis. Incidentally, it is indicative of a dichotomy inasmuch as, on the one hand, the Revenue recognizes M/s. REPL as manufacturer of the goods by accepting their duty payments as well as RT-12 returns and, on the other hand, the Revenue seeks to recover differential duty from the buyer of the goods.

4. In the result, we set aside the impugned order and allow these appeals.

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