

**Kalpesh Founders and Engineers Vs. C.C.E.**

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

**Decided On :** Feb-28-2008

**Judge :** A Wadhwa

**Appellant :** Kalpesh Founders and Engineers

**Respondent :** C.C.E.

**Judgement :**

1. Brief facts stated are that the central excise officers visited the factory premises of M/s Kalpesh Founders & Engineers, a proprietary firm, whose proprietor was Shri Ramanbhai Patel. They were engaged in the manufacture of C.I. casting of Chapter 73 of CETA, 1985. The panchanama was made in the factory premises of M/s Kalpesh Founders and Engineers on 8.4.05. On the same day, the other factory premises of M/s Reliable Industries were visited and a panchanama was also drawn there.

On same day, the statement of proprietor was recorded and records were resumed in terms of the panchanama. In the factory premises of M/s Kalpesh Founders and Engineers, sale bills of M/s Reliable Industries were found. M/s Kalpesh Founders and Engineers had admitted in his deposition that M/s Reliable Industries have no facility for manufacture of C.I. casting that some production of C.I. casting of M/s Kalpesh Founders were shown on the accounts of M/s Reliable Industries to remain within the threshold limit of exemption of Rs. 1 crore. The aggregate value of M/s Kalpesh Founders for 2003-04 and 2004-05 was thus worked out for Rs. 1,16,55,528/- and Rs. 1,03,55,536/- respectively. The proprietor

of M/s Kalpesh Founders and Engg. vide his deposition agreed to pay central excise duty which was worked out for total sum of Rs. 3,22,907/- as the SSI exemption notification No.8/03-CE dated 1.3.2003 was not available to M/s Kalpesh Founders and Engg. In the panchanama dated 8.4.05 which was made at the factory premises of M/s Reliable Industries, it was recorded that no manufacturing was going on in the factory premises and the furnace 'Kapola' was closed. No pig iron, moulding boxes and patterns were found around the factory premises of M/s Reliable Industries.

Mr. Kiritbhai M. Patel, being a partner of M/s Reliable Industries had stated during the course of panchanama that their furnace was closed for last two years and that no production had been undertaken in the said factory for last two years. No records by way of papers, registers, file etc. were found available in the factory cum office of M/s Reliable Industries.

2. In the above background a SCN was issued to the firm and to the proprietor of the firm for demanding duty inclusive of education cess for Rs. 3,22,907/- for clearances in excess of Rs. 1 crore under provisions of Section 11A. The proposal for interest and penalty were also made in the SCN.3. The said notice was adjudicated by the Assistant Commissioner, who after taking note of the fact that M/s Reliable Industries was separately registered unit by Government authorities and was having legal entities, having own balance sheet, electricity bill and sales tax return, dropped the proceedings.

4. Being aggrieved with the said order of the Assistant Commissioner, revenue has filed an appeal there against before the Commissioner (Appeals), who set aside the impugned order and confirmed the duty amount along with interest and also adjudged the appellant penal liability under Section 11AC to the extent of Rs. 1 lakh. The said order of Commissioner (Appeals) is impugned before the Tribunal.

5. After having heard both the sides and having gone through impugned order of Commissioner (Appeals), I agree with the appellate authority that the Assistant Commissioner was in error in dropping the proceedings against the appellant. The appellate authority has rightly observed that it is not the case of clubbing of clearances of the two units, in which case, two units being separate legal entities

would be of relevance. The Reliable Industries cannot be a dummy unit and without their knowledge or consent, the appellant may be indulging secretly in showing their own clearances in the name of Reliable Industries. As such, he rightly concluded that the question involved is not relatable to clubbing of two clearances but to compute the clearances of the assessee, which though manufactured by him have been shown to have been cleared by another unit.

6. As regards the evidence, it is seen that the proprietor of the appellant unit, in his statement, admitted that C.I. castings were actually manufactured by his unit shown as cleared on account of Reliable Industries. This was done so as to be in the exemption limit of Rs. 1 crore. It is also on record that M/s Reliable Industries was not having any facility to manufacture of C.I. casting. The statement of the proprietor has not been retracted till date and there is no plea to the fact that such statement was recorded under duress, coercion, threat etc. Not only that, the fact of recovery of sale bills of M/s Reliable Industries from the factory premises of the appellant strengthen the revenue's case. This fact stands further corroborated by the statement of Shri Kiritbhai M. Patel, a partner of M/s Reliable Industries, who has admitted that their factory was not working for the last two years and the furnace installed in their factory is not operative. All these facts lead only to one inevitable conclusion that the goods in question were being manufactured by the appellant and were being cleared under the sale bills of M/s Reliable Industries.

Commissioner (Appeals) has effectively dealt with the case law relied upon by the Assistant Commissioner for concluding in favour of the appellant has rightly found them to be not applicable to the facts of the instant case. Learned Consultant submits that no investigation was conducted at the end of the supplier of raw material cannot be found favoured with, inasmuch as, the supplier of the raw material would not be knowing whether the goods purchased from him are going to be used in the factory of M/s Reliable Industries or by the appellant.

7. In view of the above, I do not find any infirmity in the findings of the Commissioner (Appeals) and accordingly, the confirmation of the demand of duty and interest is upheld. The appellate authority has already taken a lenient view and has imposed penalty of Rs. 1 lakh only. No further reduction is called for in the

said penalty amount also.

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