

Spring Haven Vs. Collector of Central Excise

Spring Haven Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/7490

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

Decided On : Apr-21-1994

Reported in : (1994)(72)ELT934Tri(Chennai)

Appellant : Spring Haven

Respondent : Collector of Central Excise

Judgement :

1. These appeals are against the order of the Additional Collector of Central Excise, Madurai dated 20-11-1989. Duty has been demanded from the two appellant firms, viz. M/s. Spring Haven and M/s. Rajamanicka Nadar Industries for the reason that the former had made clearances in excess of the exemption limit as prescribed in the Notification 175/86 and these excess clearances had been wrongly made in the name of M/s.

Rajamanicka Nadar Industries during the year 1986-87 and duty has been demanded from M/s. Rajamanicka Nadar Industries during the year 1987-88 for the reason that they were not eligible for the benefit of Notification 175/86 and also for the reason that they had made clearances in the name of another firm, viz. Pagalam Narayana Saraswathy, which had no manufacturing activity of its own. The aggregate clearances of the two firms comes to Rs. 20,70,056.30 and penalties have been levied on the various partners of the three firms under Rule 209A of the Central Excise Rules, 1944.

2. The facts of the case are that during the year 1986-87 M/s. Spring Haven who were registered as a SSI unit made clearances to the tune of Rs. 14,96,539.50 till 2-11-1986 and thereafter clearances were made in the name of M/s. Rajamanickam Nadar Industries between 2-11-86 to 31-3-1987 to the tune of Rs. 12,70,219.65 and the third firm M/s.

Pagalam came in the picture thereafter. The premises according to the appellants had been given on lease basis by M/s. Spring Haven to M/s.

Rajamanickam Nadar Industries. These firms were established to manufacture the same goods, viz. chicory powder. It was found that these firms were constituted as Partnership concerns with the different members of the same family. While proceedings were initiated by the authorities on the ground that the three firms had mutuality of interest and managed by the same group of people and these different firms at different times were set up for the exclusive purpose of manufacturing Chicory Powder to take advantage of the exemption limit of Rs. 15 lakhs under Notification 175/86 by different manufacturers in the same financial year, the learned lower authority, after taking into consideration the pleas of the appellants has held that while during the year 1986-87 all the clearances have to be held to have been made by M/s. Spring Haven, during the year 1987-88 all the clearances made were by M/s. Rajamanickam Industries from the same premises. Thus the learned lower authority has held that during the year 1986-87 M/s.

Rajamanickam Nadar Industries were only a dummy set up. During the year 1987-88 M/s. Rajamanickam Nadar Industries have been held to have manufactured the goods themselves and that they had set up a dummy in the name of M/s. Pagalam Narayana Saraswati during the year after crossing the exemption limit. The learned lower authority while demanding duty has also held that while the SSI certificate was in the name of M/s. Spring Haven, M/s. Rajamanickam Nadar Industries in 1987-88 could not be taken to be covered by this certificate and all the clearances made by them in the absence of any SSI certificate as required under Notification 175/86 would be chargeable to the normal rate of duty.

3. The learned Advocate for the appellants pleaded that the Chicory powder has been manufactured in the unit by three different parties during 1986-87 and 1987-

88. He pleaded that the necessary declaration had been filed with the authorities in respect of each of the manufacturers and the appellants had done nothing behind the back of the authorities. He pleaded that M/s. Spring Haven who manufactured the goods in the unit till 2-11-1986 gave away the unit on lease basis to M/s. Rajamanickam Nadar Industries who carried on the manufacturing activities till 3-10-1987, when the unit was leased out, to another concern, viz. M/s. Pagalam Narayana Saraswathy. He has pleaded that M/s. Spring Haven had taken L-4 licence in their name in 1984 and after they ceased operation they applied for the cancellation of the said licence and the same was also cancelled by the authorities on 18-7-1987. He pleaded that M/s. Rajamanickam Nadar Industries have filed declaration for the purpose of Notification 175/88 on 8-10-1988 with a view to get exemption. He pleaded that no doubt, the unit changed hands on lease basis as soon as clearances by M/s. Spring Haven and M/s. Rajamanicka Nadar Industries reached Rs. 14,96,539.50 and Rs. 14,10,892/- but this was not against the law. The appellants under the bona fide belief felt that they were acting within the frame work of the Central Excise law and leased out their factory after having reached the limit of total exemption which is available. He pleaded that all the three firms who manufactured the goods in the unit concerned were independent legal entities, duly constituted by Partnership deeds and have to be treated as independent entities. He pleaded that in fact the learned lower authority has treated them so and it is not the case of the Department that the three firms were not independent legal entities. He pleaded, in that view of the matter, therefore, each of them would be entitled to the benefit of the Notification 175/86 based on the certificate issued in the name of M/s.

Spring Haven for the unit concerned. He pleaded, the learned lower authority was in error in holding that the SSI certificate issued in the name of a lessor could not be a valid certificate for the purpose of manufacture of the goods by a lessee. He pleaded that the learned lower authority has not appreciated the facts properly and had held merely on assumption that the goods manufactured during 1986-87 were in fact manufactured by M/s. Spring Haven, when legally M/s. Rajamanickam Nadar Industries had taken the unit on lease from them with effect from 2-11-1986. He further pleaded, during the year 1987-88 the unit was passed on lease basis to M/s. Pagalam Narayana Saraswati and the learned lower authority taking note of

the electricity consumption has wrongly held that M/s. Pagalam Narayana Saraswati is not the manufacturer and the manufacture was only on account of M/s.

Rajamanicka Nadar Industries. He pleaded, the learned lower authority has been influenced by fact that the partners of different firms were close relations and has assumed a mutuality of interests amongst them.

He has pleaded that in as much as each partnership firm is an independent entity, the learned lower authority should have decided the issue based on this fact. He further pleaded that on account of the appellants' bona fides, the longer period of limitation cannot be established and cited the judgment of the Hon'ble Supreme Court in the case of Chempliar Drugs & Liniments v. Collector of Central Excise reported in 1989 (40) E.L.T. 276 (SC). He further pleaded that the authorities have been visiting the appellants' unit, therefore, it cannot be said that the appellants had held back any facts and all the facts regarding the manufacturing activities of the appellants should be taken to be within the knowledge of the authorities and cited the judgment reported in 1989 (49) E.L.T. 634 in the case of Silver Chem Industries v. Collector of Central Excise.

4. The learned JDR for the Department pleaded that M/s. Spring Haven functioned from the unit from 1-3-1986 to 2-11-1986 and when they were about to cross the exemption limit of Rs. 15 lakhs under Notification 175/86, the unit was passed on to M/s. Rajamanicka Nadar Industries and another partnership concern which was constituted about the same time with a view to fraudulently avail the benefit of the exemption Notification 175/86 and later the unit was passed on to another partnership firm viz. M/s. Rajamanicka Nadar Industries. He pleaded that the partnership firms were constituted with husband in one firm and wife and minor son in another firm and all of them were closely related as mother, daughter-in-law etc. He pleaded, on the day of the visit of the officers, Chicory packed and marked as belonging to M/s.

Spring Haven was found in the unit. This, he pleaded, clearly shows that in fact the operations which were being carried out were by the same group of people right from the beginning and did not matter as to whose name the goods were actually

sent out.

5. We have carefully considered the pleas made by both the sides. We observe that the issue that falls for our consideration is whether the clearances made during 1986-87 from the unit were by M/s. Spring Haven upto 2-11-1986 and by M/s. Rajamanicka Nadar Industries thereafter and whether the benefit of the Notification 175/86 would be available of M/s. Rajamanicka Nadar Industries based on the SSI certificate issued in the name of M/s. Rajamanicka Nadar Industries. The further question to be decided is whether the demand is time barred. In respect of the year 1987-88 the point that falls for our consideration is whether the clearances during the year have to be held in the name of M/s.

Rajamanicka Nadar Industries upto 3-10-1987 and thereafter in the name of M/s. Pagalam Narayana Saraswati; if so whether the SSI certificate issued in the name of M/s. Spring Haven is acceptable for the purpose of benefit of the Notification 175/86 and also whether the demand is barred by limitation. We observe from the narration of facts in the order-in-original that the three partnership concerns, which carried out the manufacturing activity from the same factory, were constituted as under : "In Spring Haven Smt. N.R. Parameswari was the main partner having 50% share and P.N.R. Suriyanarayanan and P.N.R. Vijayan were the other two partners having 25% share each. The former was the mother of the latter two persons who were brothers. In M/s. Rajamanicka Nadar Industries, wife of Shri P.N.R. Suriyanarayanan namely R.S. Sudhamathi and Smt. R.V. Poonkodi, wife of PNR Vijayan were partners having 1 /3rd share in profit but half share in case of loss. There was a 3rd partner namely P.N.R. Pagala Kumar. He was an younger brother of P.N.R. Suriyanarayanan and Vijayan and a minor. Hence Smt. N.R. Parameswari, the mother represented him in the partnership. Though the profit share of P.N.R. Pagalakumar was 1/3rd, his loss share was Nil; so was the agreement framed. Besides the two partnership firms, on 30-10-1987, another firm namely M/s.

Pagalam Narayana Saraswathy was formed with P.N.R. Vijayan as Kartha at the same premises in an adjacent room (D.No. 86/1B PPVN Nathavana Street) for trading in chicory powder." The first two firms, M/s. Spring Haven and M/s.

Rajamanicka Nadar Industries, admittedly manufactured the goods from the same premises.

However, in respect of the third firm, M/s. Pagalam Narayana Saraswathy, the plea of the appellants is that the manufacturing activity was carried out in the adjacent room and where the authorities have found there was no machinery as such installed for the manufacture of chicory powder. It is seen that the three firms were constituted with the partners belonging to the same family. The manufacturing operation in the name of one firm was stopped and carried out in the name of the other firm after the exemption limit of Rs. 15 lakhs as provided for in the Notification 175/86 was about to be crossed. In a situation like this therefore, the question that arises is whether the constitution of the different firms carrying on the same operations out of the same machinery and under the cover of SSI certificate issued in the name of one firm viz. M/s. Spring Haven can be taken as independent operations of each of the firm for the purpose of Notification 175/86.

We observe that the concession to small scale industries has been given with a view to encourage the small scale entrepreneurs to be competitive with the large scale units and this benefit is not to be allowed to be used as a means for evasion by doing any paper exercise by creating different firms with a view to take the benefit for clearances in excess of Rs. 15 lakhs, the limit fixed for the purpose for a manufacturer. Taking into consideration the nature of the constitution of the firms it has to be held that there was a convergence and identity of interests so far as the manufacturing operations of the different firms involved are concerned. In a similar context the Hon'ble Supreme Court in the case of Mohanlal Maganlal Bhavsar (Deceased) through LRs. and Ors. v. Union of India and Ors., reported in 1986 (23) E.L.T. 3 (S.C.) in the context of Section 4 of the Central Excises and Salt Act, 1944 have held as under: "The next contention of the Appellants, which was also negatived by the High Court, was that in determining the value of the medicinal preparations for the purpose of levying excise duty thereon the authorities erred in taking the wholesale price of the said preparations and not the price at which these preparations were supplied by the said firm to their chief distributor Messrs MB. Bhavsar & Sons. In order to test the correctness of this contention it is necessary to set out a few facts which are material to this aspect of the case. The

firm of Messrs. M.B. Bhavsar & Sons, though a separate partnership firm was in fact a firm in which not only the original First Appellant and Appellants Nos. 2 and 3 were partners but a son of each of them was also a partner. There was thus identity of interest between the firm of Messrs M.B. Bhavsar & Sons and the firm M/s. Bhavsar Chemical Works. Both these firms had their offices in the same premises and under the partnership agreement the sons of the original First Appellant and the other two Appellants were to share only in the profits of Messrs M.B. Bhavsar & Sons but not to be liable for any losses. These two firms, therefore, cannot be said to be at arm's length or independent parties and the prices at which the medicinal preparations were supplied by Bhavsar Chemical Works to Messrs M.B. Bhavsar & Sons cannot be taken to be the real value of the said preparations. The High Court was, therefore, right in rejecting this contention also." As it is, when the authorities visited the appellants' unit, they found certain goods packed in bags with the brand name of Spring Haven were there. This goes to show that while the goods were for record purposes being shown as if these are being manufactured by the firm other than Spring Haven, the business transactions were still being carried out in a manner to indicate that the sale was in respect of the goods manufactured by Spring Haven. The appellants, it is seen, had created agreements as of a lessor and lessee with a view to show as if the interests of the unit for the purpose of operations had passed on to the other units while carrying out the same operations for the benefit of the family members related to each other. The Hon'ble Supreme Court in the case of McDowell & Co. Ltd. v. Commercial Tax Officer, reported in AIR 1986 S.C. 649, have clearly held that corporate veil has to be lifted to find out the true state of affairs and in case the appellants have resorted to clever devices to evade duty the same cannot be allowed. It is interesting to note that while agreement for lessor and lessee has been entered into between Spring Haven and M/s. Rajamanicka Nadar Industries during 1986-87 when M/s. Spring Haven were about to cross the Rs. 15 lakhs limit, similar agreement has been entered into between M/s. Rajamanicka Nadar Industries and M/s. Pagalam Narayana Saraswathy, when M/s. Rajamanicka Nadar Industries were about to cross the limit of Rs. 15 lakhs during the year 1987-88, yet they did not approach the Directorate of Small Scale Industries for getting the SSI certificate transferred in the names of the respective firms. The SSI

certificate continued to be in the name of M/s. Spring Haven. It is pertinent to note that one of the condition for the validity of the SSI certificate is that the constitution of the firm should continue to remain the same. When M/s. Spring Haven ceased to manufacture goods, the question of the SSI certificate being valid for the other two units would not arise and the benefit of Notification 175/86 would not be available to persons other than M/s. Spring Haven. We observe that the learned lower authority notwithstanding his findings that different firms had mutuality of interests and they resorted to the device by setting up different partnership concerns has chosen to hold that M/s.

Rajamanicka Nadar Industries as a manufacturer for the year 1987-88. In view of what we have said that there is convergence and identity of interests it has to be held that the clearances made during 1986-87 and 1987-88 were by the same entity. It however, makes no difference for the purpose of demand of duty for the year 1986-87 that the lower authority has allowed the benefit upto Rs. 15 lakhs to M/s. Spring Haven during the year 1986-87 and held them as the manufacturer of goods during the year. For the year 1987-88, however, M/s. Rajamanicka Nadar Industries have been held to be the manufacturer. He has rightly ruled that so far as the agreement between M/s. Rajamanicka Nadar Industries and M/s. Pagalam Narayana Saraswathy is concerned that did not confer any manufacturing status on M/s. Rajamanicka Nadar Industries, as the agreement is only for roasting of chicory and M/s.

Pagalam Narayana Saraswathy had no machinery etc. However, inasmuch as we have held that the operations were only by one entity the benefit of Notification for the year 1987-88 for the first Rs. 15 lakhs will have to be given as the production has to be considered to be by the same set of people. In regard to limitation, we observe that the appellants in this case have resorted to a clever device by leasing out the same factory to the new partnership concerns constituted specifically for the purpose of availing the small scale exemption without revealing that the new partnership concerns were being formed by the members of the same family. The appellants also as mentioned by us above, were carrying on the operations as one entity as is evident from the goods which were found packed and marked with the name of M/s. Spring Haven at the time of visit of the officers. In this view of the

matter we hold that the longer time limit under Section 11A of the Central Excises & Salt Act, 1944 has been rightly invoked by the lower authority. We, therefore, partially modify the order of the learned lower authority in so far as the demand of duty for the year 1987-88 is concerned in the above terms. So far as imposition of penalty is concerned, taking into consideration the way the appellants have gone about in setting up the firm with malafide intention, we hold that penalty imposed on different partners is maintainable in law and hold that the ends of justice will be served if the penalties imposed are reduced to Rs. 25,000/- (Rs. Twenty-five thousand) on Shri P.N.R.Suriyanarayanan; Rs. 10,000/- (Rs. Ten thousand) on Smt. R.S.Sudhamathy; Rs. 5,000/- (Rs. Five thousand) on Smt. R.V. Poonkodi; Rs. 2,000/- (Rs. Two thousand) on Shri P.N.R. Vijayan and Rs. 2,000/- (Rs. Two thousand) on Smt. N.R. Parameswari Ammal and order accordingly. But for the above modifications, the appeals are otherwise dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com