

Collector of Central Excise Vs. Saraswathi Stores

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-12-1994

Reported in : (1995)LC214Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Saraswathi Stores

Judgement :

1. This is an appeal by the Revenue against the order dated 7-5-1986 passed by the Collector (Appeals), Madras. The appellants were engaged in the manufacture of 'Cassettes' falling under Item 59 of the Central Excise Tariff. They were also receiving gramophone records from M/s.

Music India Ltd. which were manufactured by the latter from master-discs supplied by the appellants(Should be "Respondents" - Ed.).

The gramophone records received by the appellants(Should be "Respondents" - Ed.) from M/s. Music India Ltd., Bombay were sold at a higher price under their own brand name. The appellants were served with a show cause notice alleging that the value of the records obtained by them from M/s. Music India Ltd., Bombay for sale after affixation of their brand name was required to be added to the value of goods produced and cleared by them from M/s. Saraswathi Stores for the purpose of computing the value of goods cleared for the purpose of Notification No, 83/83, dated 1-3-1983. The show cause notice further alleged that the aggregate value of the goods manufactured by them and those manufactured by

M/s. Music India Ltd. on their account had exceeded the exemption limit under the said notification. They were, therefore, asked to show cause as to why duty amounting to Rs. 1,05,470.90 should not be recovered from them. The appellants contended that they had no control over the manufacturing operations of M/s.

Music India Ltd., Bombay. They stated that the transactions between them and M/s. Music India Ltd. were purely on principal to principal basis. On these grounds they denied that the value of goods received by them from M/s. Music India Ltd., Bombay were required to be clubbed to the value of their clearances from M/s. Saraswathy Stores for the purposes of the exemption under Notification No. 83/83, dated 1-3-1983.

However, in his order dated 22-10-1985 the Assistant Collector held that in respect of the gramophone records manufactured by M/s. Music India Ltd. master discs supplied by the appellants(Should be "Respondents" - Ed.) in terms of Section 2(f) the appellants(Should be "Respondents" - Ed.) had to be deemed as the manufacturers since the term 'manufacturer' includes not only a person who employs hired labour for the production of goods but also a person who engages in production of goods on his account. On the basis of this reasoning the Assistant Collector confirmed the demand. Being aggrieved by the order passed by the Assistant Collector the appellants filed an appeal before the Collector (Appeals) who held that the value of the gramophone records received by the appellants from M/s. Music India Ltd., Bombay could not be added to the clearances of cassettes by M/s. Saraswathy Stores since M/s. Music India Bombay who had taken out a licence and paid the duty had to be deemed as the manufacturers of the gramophone records in question.

2. On behalf of the appellants Shri R.K. Kapoor, Ld. SDR submitted that the Collector (Appeals) had erred in holding that the respondents could not be deemed as manufacturers of gramophone records in question which were manufactured out of the master-discs supplied by the appellants and which were finally sold by them to consumers at a higher price than what was charged by M/s. Music India Ltd., Bombay. He contended that the respondents had to be deemed as manufacturers of the gramophone records in question since in terms of Section

2(f) 'manufacturer' includes not only a person who employs hired labour in the manufacture of excisable goods but also a person who engages in their production or manufacture on his own account. He argued that in terms of Section 2(f) the respondents were the manufacturers of the gramophone records which were manufactured by them by employing the factory of another person, namely M/s. Music India Ltd., Bombay.

3. A notice intimating the date of hearing was issued by registered post on 2-9-1994 to the respondents but no one appeared on their behalf.

4. We have examined the records of the case and considered the submissions made on behalf of the appellants. It is seen that the only point that arises for consideration in this case is whether in terms of Section 2(f) the respondents have to be deemed as the manufacturers of Gramophone records produced in the factory of M/s. Music India Ltd., Bombay out of master discs supplied by the respondents and which are sold by the respondents after affixing their trade mark at a price higher than what is paid by them to M/s. Music India Ltd. and the value of such records has to be clubbed to the value of cassettes cleared by the respondents from their own factory for the purpose of determining their eligibility for exemption under Notification No. 83/83, dated 1-3-1983.

5. It is seen that the Collector (Appeals) held that even though the respondents had supplied the master-disc for the production of the gramophone records in question, it was M/s. Music India Ltd., Bombay who had to be deemed as the manufacturers, since they had engaged in the production of the goods in their factory after taking out a Central Excise Licence and had cleared the goods after payment of duty on their wholesale price, and such duty was paid by the respondents to M/s.

Music India as purchasers of the goods. B.S. Rajasekar v. Collector of Central Excise, reported in 1993 (63) E.L.T. 369 the Tribunal has held that supply of raw materials to other independent units for manufacture of goods will not make the raw material supplier the manufacturer when the dealings between the two are on principal to principal basis and the units are not fake or dummy. Paras 6 and 7 of the said order being relevant are reproduced below :- 7. It is seen from the

impugned order that M/s. Music India Ltd., Bombay as manufacturers had obtained a Central Excise licence and had paid Central Excise duty on the goods in question on the basis of the wholesale price at which they were selling the goods. In view of these facts on the ratio of the Tribunal's decision extracted above we are of the view that the respondents could not be deemed as the manufacturers of the gramophone records in question produced by M/s. Music India Ltd. merely because the master-disc used for the production of the records was supplied by them. We, therefore, hold that there was no infirmity in the finding in the impugned order that the value of the gramophone records manufactured by M/s. Music India Ltd., Bombay could not be clubbed to the value of the cassettes manufactured and cleared by the appellants for the purpose of determining their eligibility for exemption under Notification No. 83/83-C.E., dated 1-3-1983.

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