

Double Bee Enterprises Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-15-1995

Reported in : (1995)(78)ELT261TriDel

Appellant : Double Bee Enterprises

Respondent : Collector of Central Excise

Judgement :

1. M/s. Double Bee Enterprises, and M/s. Filco Industries, both situated at W-24, Okhla Industrial Area, Phase-II, New Delhi, being aggrieved with the Order-in-Original dated 31-1-1985, passed by the Additional Collector of Central Excise, New Delhi, have filed the present two separate appeals. As both the appeals emerge out of the same Order-in-original, they were heard together and are being disposed of by this common order.

2. The appellants were engaged in the manufacture of desert coolers and cooler cabinets. On the basis of the facts as contained in the show cause notice dated 12-10-1983, it was alleged that both of them constituted one unit, and that their separate existence was only on paper with a view to un-authorisedly avail exemption of Central Excise duty. The Additional Collector of Central Excise who adjudicated the matter under his Order-in-original dated 31-1-1985 demanded Central Excise duty amounting to Rs. 68,286.75, imposed a penalty of Rs. 7,000/- and redemption fine of Rs. 2,500/-.

3. The matter was posted for hearing on 22-12-1994 when Shri Somesh Arora, JDR appeared for the respondent-Revenue. None appeared for the appellants. Under letter dated 14-6-1994, a submission has been made on behalf of both the appellants that the matter be decided on the basis of the written submissions as made in the appeal, and the present legal position.

4. Shri Somesh Arora, the Id. JDR stated that it is a case of misrepresentation for availing exemption from excise duty. On paper two factories have been shown as constituted, while in fact it was only one unit. The small scale exemption was available to small scale manufacturers/factories, but in this case an unauthorised exemption under Small Scale Exemption Scheme had been availed separately for two while in fact they were only one unit. He referred to the facts as contained in the Order-in-original, and submitted that the totality of circumstances had to be seen. He pleaded for rejection of both the appeals. In support of his pleadings, the Id. JDR referred to the following decisions:-Bala Murgan and Bala Murli v. C.C., Madras - 1988 (38) E.L.T. 54 (Tri.);Unique Resin Industries v. C.C.E. (3) Universal Precision Tools v. C.C.E., Belgaum - 1993 (68) E.L.T. 427 (Tri.); (4) Shri Gajanaj Fabrics Distributors (GFD), Sangli and Ors. v. C.C.E., Pune - 1992 (43) ECR 172 (Tri.); (5) Final Order Nos. 458-459/91-C, dated 21-5-1991 in the case of Lotus Chemical Industries and M/s. Aurobindo Chemical Industries v. C.C.E., IndoreSupreme Engineering Works, M/s. Superflex Engineering Polymers Ltd. and Super Platin & Engineering Corporation v. C.C.E., Pune.

5. We have carefully considered the matter. M/s. Double Bee Enterprises and M/s. Filco Industries, both were located at W-24, Okhla Industrial Area, Phase-H, New Delhi. Both the units had one roof and one common gate, with no separate demarcation of the premises. There was common machinery, painting facility, electric meter etc. Their workers were also common. They had single integrated manufacturing facilities. Their purchases of raw materials were at a single point. On investigation, the purchase bills were found to be fake and manipulated. Stocks were not segregated. Their accounts were common. On the basis of the facts as contained in the Show Cause Notice, dated 12-10-1983, it was found that ostensibly separate factories constituted one unit, and that it was on paper only with a view to avail unauthorised double exemption of Central Excise duty, that the

two factories had been shown. They were engaged in the manufacture of desert coolers and cooler cabinets, falling, during the relevant time, under Tariff Item No. 29A of the Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred to as the 'Tariff'). During the period 1-4-1983 to 6-6-1983, they had removed excisable goods valued at Rs. 3,25,175/- on which the Central Excise duty evaded worked out to Rs. 68,286.75. During the year 1982-83, their production and sale were found to be Rs. 2,73,900. Under Notification No. 64/83-C.E., dated 1-3-1983 (effective from 1-4-1983), no exemption was available if the aggregate value of clearances of all excisable goods for home consumption (i) by or on behalf of a manufacturer from one or more factories; or (ii) from any factory by or on behalf of one or more manufacturers, had exceeded Rs. 2.5 lakhs during the preceding financial year. As during the year 1982-83, the value of their clearances was exceeding Rs. 2.5 lakhs, they were not eligible for exemption under Notification No. 64/83-C.E., with effect from 1-4-1983. Before the Additional Collector, Central Excise, New Delhi, who adjudicated the matter, the appellants had not produced any evidence, documentary or otherwise to meet the allegations or to support their contentions. The Adjudicating Authority had come to a finding that "two units have been created on paper alone with the deliberate intention of evading Central Excise duty." 6. In the appeal memo, the appellants have made general denials in similar terms in both the appeals, and have not referred to any evidence to challenge the findings of facts of the adjudicating authority. They had sub-mitted that separate registration had been obtained in the name of two units with the Sales Tax Department. They have also made other general denials. The facts and circumstances of the case establish that the two units on paper were in fact one.

7. The show cause notice is dated 12-10-1983, and the period involved is from 1-4-1983 to 6-6-1983. The notice was issued by the Additional Collector of Central Excise, and was within the normal period of limitation. *Grauer and Weil (India) Limited v. Collector of Central Excise, Baroda* - 1994 AIR SCW 4808, the Hon'ble Supreme Court have held that the ordinary meaning of the word 'premises' is a piece of land including its building, or a building together with its grounds or appurtenances and, precincts means the areas surrounding a place.

The Tribunal, against whose decision the appeal had been filed in the Supreme Court and which decision has been confirmed by the Honourable Supreme Court, had observed in case of Grauer and Weil (India) Limited, Vapi v. Collector of C. Excise, Baroda - 1986 (25) E.L.T. 338 (Tri.) that when there were, among others, common electric/water connection, bills, wages, salaries etc. were paid from common source then the second section of the premises was not entitled to be considered as independent. The Tribunal had held that penalty was imposable when mala fide intention in availing un-entitled exemption was established. It was also observed that the assessee was not to take approval of the Department for granted merely on staking claim, and that the basis of the claim was to be set out clearly. In the case of Balamurgan and Balamurli v. C.C.E., Madras - 1988 (38) E.L.T. 54 (Tri.), the Tribunal with regard to applicability of exemption Notification No. 71/78-C.E., dated 1-3-1978, and No. 80/80, dated 19-6-1980 had held that "the creation of Balamurli was nothing but a subterfuge and the firm itself is sham. It is a shadow which has no substance and intended only to create a facade behind which the State was to be deprived of its legitimate tax." In the case of Unique Resin Industries v. C.C.E. - 1993 (68) E.L.T. 230 (Tri.), the four units were having common infrastructural facilities, sales not work and pricing; they were financed and run by the same family; the products of all units were having common code numbers. The Tribunal held that the units were not independent and that the value of clearances of the four units was to be clubbed for the purposes of exemption Notification No. 175/86-C.E., applicable to small scale industrial units. In the case of Lotus Chemical Industries and Aurobindo Chemical Industries v. C.C.E., Indore, Tribunal's final Order Nos. 458-459/91-C, dated 21-5-1991, the Tribunal in similar facts had observed that the mere fact that the units are separately registered as SSI unit or that they were separately assessed for the Income Tax or Sales Tax purposes will not make any difference for clubbing of clearances of the two firms.

Similarly, in the case of Supreme Engineering Works, Super Flex Engineering Polymers and Super-plating and Engineering Corporation v.C.C.E., Pune, under their Final Order Nos. 166-168/93-C, dated 18-5-1993, the Tribunal had held that when the three units were acting in tandem, the clubbing of clearances was justified.

9. Taking all the relevant considerations into account, we find no merit in both the appeals, and the same are rejected.

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