

Rang Udyog Vs. Collector of Central Excise

Rang Udyog Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/9163

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-16-1996

Reported in : (1996)(83)ELT648TriDel

Appellant : Rang Udyog

Respondent : Collector of Central Excise

Judgement :

1. These appeals are directed against the order of Collector, Central Excise. The Collector in his order had ordered the payment of Central Excise duty amounting to Rs. 8,22,464.33 and also imposed a panlty of Rs. 5.0 lakhs each on M/s. Rang Udyog in Appeal No. E/1528 and M/s.

Indodyes Chemical Indus, in Appeal No. E/1529/91-C.2. The facts of the case briefly stated as set out in the order-in-original are that the appellants are engaged in the manufacture of S.O. Dyes. During the course of verification of the records, the officers noticed that both the units were partnership concerns having four partners in each which are either related by blood or having some common partners. It was also noticed that machineries were common, the premises for keeping the raw materials and finished product were common and raw materials were used as per the requirement in their products, there was no separate stock of raw materials, kept two common workers - (chemist and supervisor) and other staff were common who worked in both the factories. It was also noticed that both the units were looked after by Shri Satish Chand Sampatraj, partner of M /s. Indodyes Chemical Industries and husband of Smt. Kusum Satischand, one of

partners of M/s. Rang Udyog. He was assisted by Shri Raj Kumar Mohanlal, one of the partners of M/s. Indodyes Chemical Industries. The statement of some workers were recorded. It was alleged that M/s. Rang Udyog and M/s. Indodyes Chemical Industries had contravened the provisions of Rules 223, 226 read with Rule 173G(4) and Section 11A inasmuch as they did not properly store the excisable goods in their factories. A show cause notice was issued to the appellants on 31-5-1990 asking them to explain as to why the clearances of the excisable goods effected from their units should not be clubbed together in view of the facts and why a penalty should not be imposed on them. After considering the submissions made before the Collector, the Collector ordered as above. Against this order, the appellants have come up in appeal before the Tribunal.

3. Shri R.S. Dinkar, the learned Advocate appearing for the appellants submitted that the Department had demanded the duty on S.O. Dyes manufactured by the appellants by clubbing their clearances of the goods. The Learned Counsel submitted that the factory of M/s. Indodyes Chemical Industries was established in 1980 as a partnership firm with near about the same time another partnership firm obtained on lease another portion of the same plot in which M/s. Indodyes Chemical Industries were situated; that both the units were separate legal entities; that this fact was known to the department, as the Department has permitted them to avail exemption under Notification No.44/82-C.E.; that CBEC under their letter No. 21/31/86-CX, dated 10-8-1986 had clarified that if there are two firms with only some partners common in each firm is entitled to separate exemption limit; that notification does not provide any restriction and the only requirement for availing exemption is that the unit may be registered as SSI and the clearances from one or more factories of the same manufacturer should not be (sic.) exceed to Rs . ISO/- lakhs; that at a time when there was no work in the factory of the appellants, there was nothing wrong on the part of the appellants giving a .helping hand to M/s. Indodyes Chemical Indus, or vice versa; that clearances of both the units had not exceeded Rs. ISO/- lakhs separately; that there has been no direct or indirect evidence or inference with the department to establish a common interest in both the units; that the units are separately registered under, the Factories Act, Central Excises Salt and Act, 1944, Provident Fund Act, ESI, Sales Tax, Income Tax and were having their own separate water connection.

4. The learned Counsel submitted that the appellants filed a reply pointing out that they did not suppress any fact from the department as partnership deed was duly submitted to the Department; that no provision of law required to intimate all activities of each of the partner; that there was no allegation of any common funding or financing of one unit by the other. The learned Counsel also submitted that the demand was time-barred.

5. The learned Counsel also submitted that the two appellants were maintaining separate records, RT-12 returns and separate L.4 -licence, separate books of accounts; that all these facts were within the knowledge of the Department and therefore, the extended time limit of five years could not be invoked. The learned Counsel submitted that inter-relationship of partners of both the units is not a relevant factor to determine whether both the units were one and the same; that even if some of the partners have relationship with some of the partners of the other unit, it cannot be said that partnership firms could not conduct their business separately; that the Hon'ble Supreme Court in the case of *Asstt. Collector v. Jayantilal Balubhai and Others* reported in 1978 (2) E.L.T. (J 317) had held : "If a person owns a factory and is also a partner in two other factories, the production attributable to these two partnership factories cannot be said to be the production or manufacture by or on behalf of the same person. The production of the first factory of which he is the owner is by or on behalf of that person. But the production of two units is by or on behalf of two separate partnership of which he is only a partner." The learned Counsel therefore, submitted that in view of the above rulings of the Hon'ble Supreme Court, the production of the two partnership firms cannot be clubbed for purpose of levy of duty; that the Tribunal in the case of *G.D. Industrial Engineers* reported in 1983 (14) E.L.T. 1994 had held : "A partner in any of the three firms is distinct from each of the three firms and vice versa. Each of the three firms is separate and distinct from the other two and also distinct from the individual partners composing them, although they are identical. Once this is so, it cannot be said that the manufacturer in each of the three appeals is identical just because the three appellants are having common partners, although admittedly, their shares vary and they are not one firm but three separate firms each having independent existence. Nor can it be held that each industrial partner in all the three firms is a manufacturer. If that were so, the exemption limit would

become applicable to each one of the partners.

Therefore, the goods cleared by them cannot be treated as a collective entity for the purpose of extending the benefit of Notification No. 89/79 or 105/80. Further, if instead of one or two common partners, all the partners of three firms are common, still all the three firms will be treated separate and distinct firms." The learned Counsel submitted that in view of the above findings of this Hon'ble Tribunal, there was no doubt left to hold that clearances of the two partnership firms can be clubbed. The learned Counsel also cited the decision of the Tribunal in the case of Jagjivandas & Co.

reported in 1985 (19) E.L.T. 441 stating that this decision of the Tribunal has been upheld by the Hon'ble Supreme Court reported in 1989 (44) E.L.T. A24; that the allegation of the Department was that the plant and machinery of M/s. Rang Udyog was utilised by M/s. Indodyes Chemical Industries after April, 1987 is not correct, as after May, 1987 their factory was undergoing repairs and expansion work. In support of this contention, the learned Counsel cited and relied upon the judgment of the Apex Court in the case of Oudh Sugar Mills reported in 1978 (2) E.L.T. (J 172).

5. The learned Counsel Pleaded that both the units had their separate set of workers and the workers of one unit were not utilised in another unit; that the muster rolls of these units clearly suggested that each unit had its own set of workers; that during the visit of the officers in October, 1987, the factory of M/s. Rang Udyog was closed and therefore, some workers might be working with M/s. Indodyes Chemical Industries: that it was inconsequential whether one chemist was looking after both the units or one unit; that this was not a relevant consideration for clubbing the two units which are separate legal entities. The learned Counsel submitted that this can also be said about an employment of a common excise clerk. On the question of common stock of raw materials, the Id. Counsel submitted that it was clear from the Panchanama that important raw materials were stored separately. The Id. Counsel submitted that the scrutiny of their records did not indicate that the records were being manipulated; that separate account for the two factories was maintained but as some construction

work was going on in the factory, therefore; some of the raw materials came to be stored just opposite to the raw materials of the other firm; that the statement of the chemist cannot be relied who stated that he did not know whose or on whose account the production was being accounted for as it was not his job.

7. On the question of common machinery, the learned Counsel submitted that, the show cause notice admitted that the machineries of both the units were separately documented. Referring to the balance sheet for the year ending June, 1987, the Id. Counsel submitted that this balance sheet will clearly show that the units had complete set of machinery individually. Referring to the case of Bhagwandas Kanodia reported in 1987 (32) E.L.T. 204, the learned Counsel submitted that the Tribunal in this case held that commonness of office and utilizing occasionally the services of some of the workers, cannot: be a ground for clubbing the clearances of separate legal entities.

8. The learned Counsel submitted that for clubbing of clearances, it is necessary that there should be common direction and control, common funding of the resources of the units and that one unit will be financed by the other; that in their case, there is no common direction and control of the two units; that the factory of M/s. Rang Udyog was being looked after by Shri. Raj Kumar and the factory of M/s. Indodyes Chemical Industries was being looked after Shri Satish S. Shah; that there is no evidence brought on record to prove that both the units were created out of the finances of one partnership firm. The learned Counsel prayed that in view of the above submissions, the impugned order may be set aside and the appeals may be allowed. In support of his various contentions, he cited and relied upon the following decisions : (i) In the case of Nikhildeep Cables P. Lid. reported in 1994 (70) E.L.T. 273 (T); (ii) in the case of Renu Tandon v. Union of India reported in 1993 (66) E.L.T. 375 (Raj.); (iii) in the case of Jagjivandas & Co. CCE, 'Bombay-II reported in 1985 (19) E.L.T. 441 (T); and (iv) in the case of LMP Precision Engg. Co. Ltd. v. CCE, Baroda reported in 1994 (70) E.L.T. 580 (T).

9. In the case of Prabhat Dyes & Chemicals v. CCE reported in 1992 (62) E.L.T. 469, this Tribunal had held : "One unit is a partnership concern whereas the second unit is a proprietorship concern. Apart from being registered as separate

Small Scale units in the records of Western Maharashtra Industrial Development Corporation they were also being treated as separate entities by Income Tax and Sales Tax Authorities and there was no evidence of any flow back of profits between the firms. Even though the loan advanced by one of the units to the other did not involve payment of any interest, it was reflected in the book of accounts of both the firms and will involve payment of compensation to the lending firm. No adverse inference can be drawn from the common orders placed on suppliers in Bombay for procurement of raw materials as long as the materials received by each of the units were received and accounted for separately. Both the units are separately registered with Water Pollution Board. Common inspection note recorded by Inspector of Water Pollution Board for his own convenience cannot be a circumstance which would lead to a conclusion that the two units were a single entity having a common effluent treatment plant. Thus there is no evidence that the two units were in reality owned and controlled by the same person or body of persons or the two units were only a facade to avoid avail of the exemption." 10. In the case of Bhawan Das Kanodia and Ors. v. CCE, Bombay reported in 1987 (32) E.L.T. 204 (Tri.), this Tribunal had held - "Four separate legal entities who created a fifth legal entity can continue to function independently even though there was some pooling of resources as long as there was periodical separation of benefits and liabilities and adjustment of accounts." 11. In the case of Sai Coalers, Itarsi and Ors. reported in 1992 (40) ECR 7, it was held that common premises, brand name, partners, etc. not sufficient to determine that concerns are dummy units, in absence of common funding/financial flow back.

12. In the case of A. Rathinam, Prop. Michael Match Works and Ors. v.CCE, Madurai reported in 1992 (60) E.L.T. 451 (Tri.), this Tribunal had held that - Clubbing of clearances not justified without evidence that some units were dummies. Location in same compound no ground to show that units were not independent. Exemption must be allowed when clearances of each unit are within exemption limit. Allegation of suppression not sustainable where goods were under physical control of department.

14. Shri Sanjeev Sachdeva, the learned SDR assailing the contention of the learned Counsel for the appellants submitted that in these two concerns, each had

four partners and the partners were related to each other or were common in both the concerns; that the machineries were common, the premises for keeping raw materials and finished goods were common and raw materials were used as per their requirement in their products; that no separate stock of raw material was kept, workers, chemist, supervisor and other staff were common and worked in both the units and getting their salary from one unit, utilising machineries of each other with mutual understanding; that one unit will manufacture dark colours and second unit will manufacture light-colours; that both the units were looked after by Shri Satish Chanel Sampatraj; that all the employees were working under the guidance of Shri Satish Chanel Sampatraj and Shri Raj Kumar; that the units suppressed the facts that they were utilising the machineries by each other; that one unit was the dummy of the other and was controlled by one individual, therefore, the lower authorities have rightly clubbed the clearances of the two units and also imposed penalty justifiably.

15. Heard the submissions of both sides and perused the case-law cited and relied upon by the learned Counsel.

16. For purpose of treating the units as a single manufacturer, the grounds agitated before us are :- (a) that the partners in the two partnership concerns were related to each other or were common; (c) that the same person was directing and controlling both the units; and (d) that the stock of raw materials of both the units was placed at one place and machineries were common.

17. On analysis of each of the above factors, we find that all these issues were discussed and commented upon in the judgments cited and relied upon by the appellants. We also observe that the appellants were two partnership firms having separate income tax registration, as well as sales tax registration. Both the units were registered as SSI unit.

One very important factor in deciding whether the units are one and the same, is the common source of expenses from one common fund or from one firm only and flow-back of funds from one to the other? On examination of the entire evidence, we find that there is no allegation that either of the appellants was funding the expenses of the other nor there was any evidence to show that there was flow-

back of profits or money or sale proceeds from one firm to the other. Having regard to the above discussions, the facts of the case and the case-law on the subject, we hold that the clearances of the two partnership firms cannot be clubbed together. Therefore, the clearances of the two units shall be eligible separately for the benefit of exemption Notification No. 175/86 as amended.

18. The Collector, in his findings had held that all the acts of contravention committed by the parties by reason of commission, wilful misstatement and suppression of facts have been done with an intent to evade payment of Central Excise duty and constitute offence as described under Sub-rule (1) of Rule 173Q of the Central Excise Rules, 1944. As we have already held that the clearances of the two partnership firms cannot be clubbed together and that each of the two firms shall be eligible for exemption under Notification No. 175/86 as amended, we hold that the intention to evade payment of duty is not established in these cases. Therefore, no penalty is imposable.

19 Having regard to the above discussions, the impugned order is set aside and the appeals are allowed.

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