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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-1996

Reported in : (1996)(87)ELT734TriDel

Appellant : Step Cosmetics

Respondent : Collector of Central Excise

Judgement :

1. In this appeal filed by M/s. Step Cosmetics, Thane ('Step' for short), the issue our consideration is whether the cosmetics and toilet preparations were manufactured by the appellants, a proprietary unit, in the name of M/s. Arkay Industries ('Arkay' for short), whose partners were the son and wife of the Proprietor of M/s. Step. The Collector of Central Excise, Bombay-Ill, who had adjudicated the matter, had held hat for the purposes of Notification No. 140/83-C.E., dated 5-5-1983, the clearance value of the cosmetics and toilet preparations both cleared by M/s. Step and those cleared in the name of M/s. Arkay had to be clubbed together. He had observed, "I have no doubt that all efforts by both the units to show that they are separate legal entities are paper entries with a view to mis-lead authorities to believe that transactions were between independent parties." He confirmed the central excise duty demand of Rs. 1,28,220.25 demanded from M/s. Step. He also imposed a redemption fine of Rs. 10,000/- and a penalty of Rs. 10,000/-on M/s. Step.

2. The matter was posted for hearing on 2-11-1995 when Shri Gopal Prasad, Consultant appeared for the appellants. Shri J.M. Sharma, JDR duly represented

the respondent/Revenue.

3. Shri Gopal Prasad, ld. Consultant stated that only issue for our consideration in this appeal is that of clubbing of Arkay with Step. He submitted that the two units - M/s. Step and M/s. Arkay were separate although both were in the same building and both were manufacturing cosmetics and toilet preparations. It was contended that both the units had separate licence and worked under an agreement in the same premises. He referred to the Tribunal's decision in the case of Jagjivan Das and Co., Thane v. CCE, Bombay-II - 1985 (19) E.L.T. 441 (Tribunal) where the Tribunal had held that innocuous circumstances such as use of common premises, telephone, telegraphic address, etc. do not conclusively establish manufacture for and on behalf of one another. Reference was also made to the Tribunal's decision in the case of Shree Packaging Corpn., Hyderabad v. CCE, Hyderabad - 1987 (32) E.L.T. 94 (Tribunal) to plead that Arkay was not a dummy of Step. On the question of limitation, the ld. Consultant submitted that there was no suppression and that the Department was in the knowledge of their working. He referred to the Hon'ble Supreme Court's decision in the case of Tamil Nadu Housing Board v. CCE, Madras - 1994 (74) E.L.T. 9 (SC) to plead that the extended period of limitation was not invokable in the circumstances of this case.

4. Shri J.M. Sharma, JDR replied that Arkay was only in name and that the goods had been manufactured only by Step. Arkay had no separate existence. They had no machinery and had no technical staff. The circumstances of the case and evidence on record, conclusively establish that the excisable goods were manufactured by Step, and the same were passed on in the name of Arkay to avail of the small scale exemption. As regards the agreement, the ld. JDR submitted that they were only a facade. He pleaded for the rejection of the appeal. In support of his contention, the ld. JDR relied upon a number of decisions.

5. We have carefully considered the matter. Step was a proprietary concern and was engaged in the manufacture of cosmetics and toilet preparations. Arkay was a partnership concern in which son and wife of the proprietor of Step were partners. It was shown that Arkay were also engaged in the manufacture of cosmetics and toilet preparations. They were said to be working since 1983-84. There was a

small scale exemption Scheme with regard to cosmetics and toilet preparations which was announced under Notification No. 38/83-C.E., dated 1-3-1983 (effective from 1-4-1983). This Scheme was continued under Notification No. 140/83-C.E., dated 5-5-1983. Arkay had no machinery of their own.

The machinery installed in the premises where Step was located and Arkay also was said to be located, was owned by Step. It was argued that the manufacture of cosmetics and toilet preparations did not require much machinery and that they were having a stirrer which was adequate for production of cosmetics like Nail Polish, Lipstick, Nail Enamel, etc. Arkay had no quality control staff. They happen to be on the pay roll of Step. The goods were cleared partly in the name of Step and partly in the name of Arkay.

6. Cosmetics valued Rs. 32,000/- said to belong to Arkay were lying in the premises declared for Step when the central excise officers visited the premises in January, 1987. Admittedly, electricity/water bill was paid by Step.

7. In his statement dated 27-1-1987 recorded under Section 14 of the Central Excises & Salt Act, 1944 (hereinafter referred to as the 'Act'), Proprietor of Step had stated that Arkay were their loan licencee. In reply to the show cause notice, they termed it as an error and changed the relationship to be one of leave licencee. They had argued in reply to the show cause notice that "using machinery of one firm by another does not establish manufacture for or on behalf of one another." By no account, they established that Arkay was a working unit and had its own separate existence for the purposes of the small scale exemption under Excise Law.

8. If Arkay is taken as an independent unit then it will be in the nature of a rival unit in the same premises and that M/s. Step had to establish by cogent reasons as to why they allowed the rival unit to operate particularly when their production was going up and was going to exceed the small scale exemption limit.

9. Notification No. 140/83-C.E., dated 5-5-1983 provided exemption to cosmetics and toilet preparations up to specified value limit cleared for home consumption on or after the first day of April in any financial year by or on behalf of a manufacturer

from one or more factories. It was provided that the aggregate value of clearances of the specified excisable goods from any factory by or on behalf of one or more manufacturers at the concessional rates of duty was not to exceed the specified value limit in any financial year. It was further provided that "nothing contained in this Notification shall apply to a manufacturer (i) if the aggregate value of clearances of all excisable goods by him or on his behalf for home consumption from one or more factories during the preceding financial year had exceeded Rs. 20 lakhs; (ii) if the aggregate value of clearances of the said goods by him or on his behalf for home consumption from one or more factories during the preceding year had exceeded Rs. 15 lakhs. 'Factory' means any premises including the precincts thereof wherein or in any part of which excisable goods are manufactured or wherein or in any part of which any manufacturing process connected with the production of such excisable goods is being carried on or is ordinarily carried on.Grauer and Weil (India) Ltd., Wapi v. Collector of Central Excise, Baroda - 1994 (AIR) SCW 4808, the Hon'ble Supreme Court had 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 that the precincts means the areas surrounding a place. The Tribunal against whose decision the appeal had been filed by M/s. Grauer & Weil (India) Ltd. in the Supreme Court and which decision has been confirmed by the Hon'ble Supreme Court had observed as reported at 1986 (25) E.L.T. 338 (Tribunal) that when there was among others common electric/water connection bills, wages, salaries, etc.

were paid from common sources, 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 Bala Murli v. CCE, Madras - 1988 (38) E.L.T. 54 (Tribunal), the Tribunal with regard to the applicability of small scale exemption 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 facade behind which the State was to be deprived of its legitimate tax." In the case of Unique Resin Industries v. CCE -

1993 (68) E.L.T. 230 (Tribunal) the four units were having common infrastructural facilities, they were financed and run by the same family. The Tribunal had 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 small scale exemption. In the case of Lotus Chemical Industries and Aurobindo Chemical Industries v. CCE -Tribunal's final Order No.458-459/91-C, dated 21-5-1991 the Tribunal in similar facts and circumstances had observed that mere fact that 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 the clearances of the two firms. Similarly in the case of Super Engg. Works, Super Flex Engg. Polymers & Super Plating & Engg.

Corporation v. CCE, under their final Order No. 166-168/93-C, dated 18-5-1993 [reported in 1996 (82) E.L.T. 102 (Tribunal)] the Tribunal had held that when the three units were acting in tandem, the clubbing of clearances was justified.

11. The plan of the unit was also confusing and small scale exemption could not be automatically extended on the basis of such a floor plan.

12. The ld. JDR had relied upon the Madras High Court's decision in the case of Dukes Pharma v. Govt. of India - 1994 (69) E.L.T. 433 (Madras) to plead that clearances of loan licencee were clubbable. Para 12 from that decision is extracted below :- "(12). In this connection, he invited my attention to W.M.P. Nos.

26177 and 26327 to 26330 of 1992. In all the W.M.P.s, the petitioners have prayed for permission for raising additional grounds, based on Circulars of the Board. The Circulars referred therein say that each loan licensee was an independent manufacturer.

There is no quarrel on that aspect. But while coming to the question of exemption, the decisions are to the effect that, that must be considered subject to clauses 2 and 3 in the Notifications, alongwith clause 4. If so considered, notwithstanding the fact that each loan licensee is an independent manufacturer, the clearances of such loan licensees will have to be clubbed alongwith the clearances of factory owners. Therefore, the Circulars of the Board will not help the petitioners.

However, W.M.P. No. 26328 of 1992 in W.P. No. 8885 of 1985 is for amending the prayer in the writ petition. The petition is allowed. No costs." In the case of Shree Gajanan Fabrics Distributors v. CCE, Pune - 1992 (43) ECR172 (Tribunal), it has been held by the Tribunal that close relationship, use of common premises and availing common facilities - justifies clubbing and that for extended limitation visits by officers were not mitigating circumstances. Para 33 from that decision is extracted below :- "(33). If we examine the true nature of the transaction namely the segregation of the units soon after 8-11-1982, which is the date of coming into force of Notification 253/82, we notice a purpose in segregating the units. The close family relationship among proprietors, partners, etc. of the units, their location in the same premises, the use of common facilities like water, steam and security arrangements besides the servicing facilities of Onkar Service Centre are factors which taken cumulatively leave no doubt in our mind that these units were separated for the specific purpose of showing their independent existence so as to take advantage of the exemption Notification. This is what has been termed as camouflage of identity of units by the Bombay High Court in the case of Swadeshi Dyeing case (supra) judgment." Para 4 from the Tribunal's decision in the case of Universal Precision Tools v. CCE, Belgaum - 1993 (68) E.L.T. 427 (Tribunal) is also extracted below :- "4. We observe that the short point that falls for consideration is whether M/s. Universal Conveyors was only a firm registered on paper and the clearances alleged to have been of the goods which were manufactured by the appellants and cleared in the name of M/s.

Universal Conveyors. We observe that the Department had made detailed investigation with the various authorities concerned with the starting of operation of a new unit. Investigation has been made with M/s. Karnataka Financial Corporation, who have stated that the inspection of the machinery of M/s. Universal Conveyors was done by them in Nov., 1987 and the machine was installed at the premises of M/s. Universal Precision Tools. The enquiries with the Karnataka Electricity Board showed that M/s. Universal Conveyors had no independent electricity connection and the Karnataka Small Scale Industries Development Corporation authorities also stated on 11-2-1988 that M/s. Universal Conveyors had not been allotted any shed in the industrial estate. The Assistant Director, District Industries Centre, informed the Central Excise authorities that no

permanent registration certificate had been given to M/s. Universal Convevors. Ml of these clearly go to show that during the relevant period M/s. Universal Conveyors were not existing as a manufacturing unrt and even the machinery they purchased was installed at the premises of the appellants only. We further find it significant that M/s. Universal Conveyors was set up as a partnership concern by 4 of the partners of the appellants, firm about the time when the appellants were about to exceed the exemption limit. It was not appeal to reason that a partnership concern would carve out another partnership in set up a rival to their products. In the background of the facts of this case we hold that in the absence of any evidence that any goods had been arranged to be manufactured by M/s.

Universal Conveyors on their own account and the activity regarding the same was carried out at a place different from the appellants' unit, the learned lower authority's order holding the appellants as the manufacturer of the goods in question is maintainable in law and the duty has been rightly demanded from them. Taking into consideration the totality of the facts and circumstances of the case and the quantum of duty involved, we hold that the ends of justice would be served if the penalty is reduced to Rs. 10,000 (Rs. Ten thousand) and order accordingly." 13. As regards the extended period of limitation, it is seen that in the show cause notice dated 20-8-1987, fraud, wilful suppression and mis-statement of facts with intent to evade the payment of excise duty were alleged. The show cause notice sets out particulars for the charge of suppression of facts and the mala fide intention of the appellants.

14. The Revenue Acts on the basis of the declarations filed by the assessees. In the nature of things, the declarations had to be correct and all relevant facts had to be correctly stated therein. By filing incomplete/incorrect declaration, and by with-holding vital facts which are only within the special knowledge of the assessee it could never be a valid defence that the Revenue should have un-earthed the full and correct facts which the assessee had sought to suppress. No legal frame-work could be established on such an understanding.

15. The extended period of limitation had been put on the Statute Book for a purpose and with specific situations in view. Tax compliance is a serious matter for

developed countries like ours and the purposes with which small scale exemption had been provided for meeting our socio economic objectives, cannot be allowed to be defeated on the plea that only the normal period of limitation should have been applied in a situation as in the present case. The adjudicating authority had held that "the declarations claiming exemption from licensing control etc.

are mis-declarations." In the case of Priya Corporation v. CCE - 1990 (48) E.L.T. 26 (Tribunal) the Tribunal had held that when the main unit is fragmented into two units to wrongfully avail exemption, extended period of limitation was applicable.

16. Taking all the relevant considerations into account, we do not find any merit in this appeal and the same is rejected. Ordered accordingly.

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