(1997) 05 SC CK 0059

In the Supreme Court Of India

Case No : Civil Appeals Nos. 1534-40 Of 1993

Gajanan Fabrics Distributors, Sangli and Others APPELLANT

Vs

Collector of Central Excise, Pune RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

Citation : (1997) 92 ELT 451 : (1997) 11 SCC 66

Hon'ble Judges : S. P. Bharucha, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—The order under appeal was passed by the Central Excise and Gold (Control) Appellate Tribunal. The Tribunal found that the show cause notices issued to the assessees (appellants) did not clearly indicate how the demands for excise duty had been worked out nor was there any indication of the source from which the figures had been compiled. The liability proposed to be fastened being large, it was found necessary to clearly indicate these details so that the assessees were in a position to meet the charge. The Tribunal, therefore, found sufficient ground to set aside the Collector's order under appeal before it insofar as the calculations of the demand for duty were concerned and refer the case back for fresh adjudication with a direction that the Collector would have the demand for duty calculated and the basis thereof indicated in proper detail to enable the assessees to meet the charge. At the same time, the Tribunal stated that it had rejected all other contentions of the assessees.

2. We find, after having heard learned Counsel, that it is necessary to remand the matters to the Collector to consider the entire case afresh. The principal factor that leads us to this conclusion is the finding of the Collector, upheld by the Tribunal, that the seven units which are the appellants before us "are only a corporate facade although registered with the various authorities with a view to camouflage their actual identity and thereby avail of the exemption which, otherwise, would be inadmissible to them". The Tribunal failed to give due

attention to the fact that the Collector had confirmed, in the sum of Rs. 11,84,708.51, the demand made in the show cause notices upon all seven units and their partners or DirectOrs. Having regard to his conclusion that all units other than Gajanan Weaving Mills were fictitious units, the sequitur, one would have assumed could only be that it was Gajanan Weaving Mills which was the assessee and liable to satisfy the demand. By confirming the demand upon all the seven units the Collector appears, however, to have treated them all as assessees and, implicitly recognised their independent existence.

3. The facts of these cases, therefore, require to be re-considered, having regard also to the law that has now been settled by judgments of this Court and the High Courts subsequent to the passing of the order under challenge.

4. The appeals are, therefore, allowed and the order of the Tribunal under appeal is set aside. The matters shall go back to the Commissioner, Pune, to hear and decide the show cause notices afresh. The parties shall be at liberty to file additional documents, if they so chose. It is made clear that the remand is now unlimited and the matters shall be decided without reference either to the order of the Tribunal under appeal or the earlier order of the Collector.

5. No order as to cost.

