(2015) 03 RAJ CK 0157

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3377/1999

S.N. Industries APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 324 ELT 138

Hon'ble Judges : Sunil Ambwani, C.J.;Ajit Singh, J.

Bench : Division Bench

Advocate : S.S. Hora, for the Appellant; Anil Mehta, Advocates for the Respondent

Judgement

1. We have heard learned counsel appearing for the writ-petitioner, and learned counsel appearing for the Central Excise Department.

2. A show cause notice was given to M/s. S.N. Industries, B-36, Sudarshanpura, Jaipur, by the Central Excise Collectorate, Jaipur on 17.10.1990, for contravening the provisions of Rules 173-B, 173-G, 173-F and 226 of the Central Excise Rules, 1944, for removing the excisable goods without payment of appropriate duty, and without accounting for in the statutory records by way of manipulation and fragmentation of units, so as to avail the benefit of Notification dated 01.03.1986, fraudulently, in evading Central Excise Duty to the tune of Rs. 74,249.28, which included the Basic Excise Duty and the Special Excise Duty.

3. In an inspection carried out on 25.04.1990, it was found that the unit M/s. S.N. Wires, which was situate in the same premises, in which the petitioner''s unit M/s. S.N. Industries was situate, was locked. It was unlocked by one of the partners, Shri Sanjay Trehan, who was the common partner in M/s. S.N. Industries- the petitioner, and S.N. Wires. One of the machines, was not found connected with the power. It was found that M/s. S.N. Industries and M/s. S.N. Wires, had shown the consumption of different units of electricity for almost the same quantity of manufacture in electric wires and copper wires. Whereas M/s.

S.N. Industries- the petitioner, had produced 12596.8 kgs. of copper wires by consuming 8299 units of power, M/s. S.N. Wires claimed to have manufactured 9609.1 kgs. of copper wires in the months of February and March, 1999, by consuming only 101 units of power.

4. A number of factors of functional integrality of both the units was observed in the inspections including common facility of pickling and annealing (the process involved in manufacture of copper wire). The goods manufactured in M/s. S.N. Industries were being shown as having been produced and cleared by M/s. S.N. Wires. The Adjudicating Authority did not find the reply to the Show Cause Notice, to be satisfactory, and confirmed the demand. In an appeal under the Central Excise and Salt Act, 1944, the Customs Excise and Gold (Control) Appellate Tribunal, dismissed the appeal against the findings, after a direction was issued by the High Court to decide the appeal.

5. The petitioner/appellant did not appear to press the grounds and requested for decision on merits, on the basis of available records. The Tribunal found that a very little manufacturing activity was carried out in the premises of M/s. S.N. Wires, and for such manufacturing activity, M/s. S.N. Wires was dependent upon M/s. S.N. Industries. The summary of findings recorded by the Tribunal is as follows:--

"Careful study of the records of this case indicates that the machinery in the premises of M/s. S.N. Wires was not in working condition and moreover the unit had no arrangement for pickling and annealing of the wire on which it was dependent upon M/s. S.N. Industries. It is also found that the quantity of wire produced by per unit consumption of electricity in case of M/s. S.N. Wires is extremely high as compared to the quantity of wire produced per unit consumption electricity in case of M/s. S.N. Industries while the machinery found in M/s. S.N. Wires was old and not in working condition which has not been denied by Mr. Sanjay Trehan and he has not offered any satisfactory explanation for the same. From these facts, it is clear that there was very little manufacturing activity in the premises of M/s. S.N. Wires and even for that M/s. S.N. Wires was dependent upon M/s. S.N. Industries for completion of manufacture as M/s. S.N. Wires did not have arrangements for pickling and annealing. It is also clear that the goods manufactured in the assessee''s unit were being shown as having been manufactured and cleared by M/s. S.N. Wires. The judgment of the Tribunal in case of Priya Corporation v. Collector, Central Excise mentioned above is therefore squarely applicable to the facts of this case." 6. The Tribunal confirmed the findings recorded by the Adjudicating Authority, that on the evidence on record and on the basis of the discussion, the unit S.N. Wires was a dummy of unit S.N. Industries, and consequently dismissed the appeal, giving rise to this writ petition.

7. At the relevant time, there was no provision for filing an appeal in the High Court, and thus, this writ petition was filed, which was admitted and to which reply has been filed.

8. Learned counsel appearing for the petitioner has taken pains to demonstrate from the evidence and the reports of the defective meter of the Electricity Board, that the consumption of the unit is not the determinative factor, as the electricity meter was defective, and that the permission for annealing of the manufactured goods of M/s. S.N. Wires M/s. S.N. Industries, was taken from the Central Excise Department. He has also relied upon the reply given to the notice, in explaining that on the date of inspection, there was marriage in the family of the partners, and that the facts narrated by the inspecting party were not sufficient. In fact, one the members of the Inspectors was caught in CBI trap, and was convicted, which was made the basis of harassing the petitioner.

9. Learned counsel appearing for the petitioner has relied upon Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers'' Union and Its Workmen, , in pressing his argument as to when the functional integrality of the units can be accepted. The principles of law laid down in the matters of labour law, can be usefully applied against the argument raised by the petitioner, inasmuch as the Supreme Court held that in all such cases, where functional integrality is alleged, the Court has to consider with care how far there is "functional integrality" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated.

10. Learned counsel appearing for the petitioner has also relied upon the judgment of learned Single Judge of this Court in Renu Tandon Vs. Union of India (UOI), , which was referred to by the Supreme Court in Commissioner of Central Excise, Jaipur Vs. Electro Mechanical Engg. Corpn. etc., .

11. We do not find any observation in Renu Tandon v. Union of India(supra), which may help the petitioner. It was held in that case, that the two units cannot be treated as one unit merely because of proximity of relationship or the situation of the two factories or because there are some common employees unless there is a clear and specific evidence that there is mutuality of business interest between the two units and that both have interest in the business of each other or they have common funding and financial flow-back.

12. In the present case, we find that both, the Adjudicating Authority and the CEGAT, have considered the entire evidence, in arriving at a finding that M/s. S.N. Wires was the dummy unit of M/s. S.N. Industries and the consumption of electricity by unit M/s. S.N. Wires, the arrangements of borrowing, work of purchase on raw material and the integrated manufacturing of the products, clearly established that the two units situate in the same premises, are not separate, but are functionally integrated, of which the returns have been filed, to claim exemption, fraudulently, for evading the excise duty.

13. The writ petition has no merit and is, accordingly, dismissed.