
(2010) 05 P&H CK 0110
In the Punjab And Haryana At Chandigarh

The Commissioner, Central Excise Commissionerate	APPELLANT
Vs	
Deora Engineering Works	RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Citation : (2010) 05 P&H CK 0110

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The facts in epitome, culminating in the commencement of, relevant for disposal of the present appeal filed by the revenue and emanating from the record, is that the respondent-assessee M/s Deora Engineering Works (for brevity "the assessee") was engaged in manufacture of parts and wire stitching machines. Acting on the casual information, the Excise Officers visited the factory premises of the assessee and noticed that it (assessee) was using the brand name of "Dominant" while clearing the goods. During the course of search/inspection of the premises, it revealed that one more manufacturing unit, namely, M/s Prominent Engineering Works, was also engaged in the manufacture and clearance of the same goods under the same brand name of "Dominant". The statement of Santokh Singh, partner of the firm, was recorded. He stated that they started manufacturing the goods in 1988 and had not crossed SSI exemption slabs till date. They are regularly filing the declarations under Rule 174 of Central Excise Rules, 1944 (for short "the Rules"). It was admitted that the goods manufactured by the assessee's firm and M/s Prominent Engineering Works bear the same brand name of "Dominant".

2. Sequelly, the factory premises of M/s Prominent Engineering Works were also searched and statement of Davinder Singh son of Santokh Singh, partner was recorded. During the course of inquiry, it revealed that both the firms are manufacturing/clearing the products by the same brand name of "Dominant" in the same premises, having common management. Therefore, a show cause

notice dated 18.6.1998 was issued, as to why the central excise duty alongwith interest be not recovered, penalty be not imposed and the stitching machines of the same brand name be not seized.

3. Subsequently, in pursuance of show cause notice, a corrigendum dated 29.9.1999 was also issued to the assessee for clubbing the clearance of the goods on the ground that both the units belong to same persons and they had common machinery, staff and office premises etc.

4. In the wake of the show cause notice, the assessee filed the reply and explained that the brand name of "Dominant" belongs to other firm, is not based on any evidence. It was clarified that Devinder Singh, Harbinder Singh sons of Santokh Singh, Inderjit Kaur wife of Santokh Singh and Santokh Singh are the common partners of both the firms. As they are common partners in both the firms, so, the brand name is also common and the machines are cleared from both the units under common serial number having common accounts. According to the assessee, in that eventuality, it cannot be said that they are using the other person's brand name. In all, according to the assessee, they have not breached any rule and have availed the SSI exemption legally. It will not be out of place to mention here that the assessee has stoutly denied all other allegations contained in the show cause notice and prayed for its reversal/ withdrawal.

5. The explanation put forth by the assessee did not find much favour and the Adjudicating Authority confirmed the demand of duty only to the extent of Rs. 1,52,184/-, which was worked out after clubbing the clearance of both the units, vacated the rest of the demand and imposed a penalty of Rs. 8000/- under Rule 173Q of the Rules, vide order dated 2.2.2000 (Annexure P1).

6. The revenue did not feel satisfied with the order (Annexure P1) and filed the appeal before the Commissioner, Customs & Central Excise (Appeals). The first Appellate Authority observed that clubbing the clearance of both the units was not proper and legal and allegations that they had manufactured and cleared the goods under the brand name of another unit are proved. Therefore, the Appellate Authority accepted the appeal of the revenue and enhanced the amount of duty to Rs. 11,79,855/-and penalty from Rs. 8000/- to Rs. 1 lac, vide order dated 22.2.2002 (Annexure P2).

7. Aggrieved by the order (Annexure P2), the assessee filed the appeal, which was accepted by the Customs, Excise and Gold (Control) Appellate Tribunal, vide impugned order dated 10.10.2002 (Annexure P3). The rectification application filed by the revenue was dismissed by the Appellate Tribunal, vide order dated 25.7.2003 (Annexure P4).

8. Again, the revenue did not feel satisfied with the impugned order (Annexure P3) and filed the present appeal, which was admitted to consider the following substantial question of law:

Whether in the facts and circumstances of the case, the Tribunal has erred in holding the letter dated 29.09.99 issued by the Superintendent (Adjudication) as corrigendum to the Show Cause Notice dated 18.06.98 issued by the Commissioner and then basing its decision on this letter dated 29.09.99 beyond the scope of the Show Cause Notice dated 18.06.98.

9. Learned Counsel for the revenue has argued that as the letter dated 29.9.1999 issued by the Superintendent (Adjudication) cannot be treated as corrigendum and part of the show cause notice dated 18.6.1998, therefore, the decision of the Adjudicating Authority to club the clearance of both the units and then to levy duty accordingly was not legal. The argument further proceeds that since the assessee's firm has cleared the goods with the trade name "Dominant" of other firm, so, it was not entitled to claim SSI exemption and was liable to pay the amount of entire duty alongwith interest and penalty. The argument is that the Commissioner (Appeals) has rightly accepted the appeal of the revenue, vide order (Annexure P2), but the Appellate Tribunal fell in legal error in accepting the appeal of the assessee, vide impugned order (Annexure P3).

10. On the contrary, the learned Counsel for the assessee has urged that the corrigendum dated 29.9.1999 issued by the Superintendent (Adjudication), requiring the clubbing of the clearance of the goods was valid and since both the firms i.e. M/s Deora Engineering Works and M/s Prominent Engineering Works are constituted by the common partners/members of the same family, having common management, accounts etc., manufacturing and clearing the goods from the same premises, so, the Adjudicating Authority has correctly ordered the clubbing of the clearance of the goods for the purpose of levying tax, in pursuance of corrigendum dated 29.9.1999, which was rightly confirmed by the Appellate Tribunal and no interference is warranted in this relevant connection. In this regard, he has placed reliance on judgment of the Hon'ble Supreme Court in case Commissioner of Central Excise, New Delhi Vs. Modi Alkalies and Chemicals Ltd. and Others, .

11. Having regard to the rival contentions of the learned Counsel for the parties, we are of the considered view that there is no merit, therefore, the present appeal deserves to be dismissed.

12. Admittedly, in pursuance of the show cause notice, the department issued a corrigendum dated 29.9.1999 for clubbing the clearance of the goods of both the indicated firms and accordingly, the Adjudicating Authority, having clubbed the clearance of the goods, confirmed the part of demand of duty. The Commissioner (Appeals) observed that the order of clubbing was not proper and enhanced the demand of duty and amount of penalty. The Appellate Tribunal restored the order of the Adjudicating Authority in this relevant direction. The assessee has already paid the amount of duty and penalty as confirmed by the Adjudicating Authority. Thus, it would be seen that the facts of the present case are neither intricate nor much disputed.

13. Above being the position on record, now the short and significant questions, arise for determination in this appeal, are as to whether the corrigendum dated 29.9.1999 issued by the Superintendent (Adjudication) was valid and as to whether the clearance of the common goods of same brand manufactured by both the firms are liable to be clubbed or not, in pursuance of the said corrigendum?

14. The main arguments of the learned Counsel for the revenue that as the corrigendum dated 29.9.1999 issued by the Superintendent (Adjudication) was not valid and the Adjudicating Authority wrongly clubbed the clearance of the goods of both the firms, are not only devoid of merit but misplaced as well.

15. Possibly, it cannot be denied that the Hon"ble Apex Court in case *Pahwa Chemicals Pvt. Ltd. Vs. The Commissioner of Central Excise, New Delhi*, and this Court in CEA No. 5 of 2005 titled as "*Commissioner of Central Excise Commissionerate, Delhi-IV v. Orient Steel Industries*" decided on 11.2.2010, have categorically held that "the Superintendent is officer of the department and had jurisdiction to issue show cause notice". Therefore, the contrary argument of learned Counsel for the revenue that the Superintendent was not competent to issue corrigendum dated 29.9.1999, is not tenable.

16. Now advertng to the question of clubbing, an identical question arose for determination before the Hon"ble Supreme Court in *Modi Alkalies & Chemicals Ltd.*'s case (supra). Having interpreted the relevant provisions, it was ruled that "two basic features which prima-facie show interdependence are pervasive financial control and management control and if the two essential ingredients are available, then the clearance of the firms should be clubbed."

17. In the instant case, it is not a matter of dispute that the partners of both the firms are common and belong to same family. They are manufacturing and clearing the goods by the common brand name, manufactured in the same factory premises, having common management and accounts etc. Therefore, we are of the considered view that the clearance of the common goods under the same brand name, manufactured by both the firms, was rightly clubbed by the Adjudicating Authority and confirmed by the Appellate Tribunal.

18. No other point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

19. In the light of the aforesaid reasons, it is held that the corrigendum dated 29.9.1999 issued by the Superintendent (Adjudication) was valid and the Adjudicating Authority has rightly clubbed the clearance of goods of both the assessee's firms as well as M/s Prominent Engineering Works, for the purpose of levy of duty, which was correctly confirmed by the Appellate Tribunal. Thus, the question of law is answered against the revenue and in favour of the assessee.

20. For the reasons recorded above, the present appeal is dismissed, with no order as to costs.