

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

E/319/2008

(Arising out of Order-in-Original No.33/2008 (CE) dated 24.3.2008 passed by the Commissioner of Central Excise, Madurai)

M/s. Sri Vivekananda Industries

Appellant

Vs.

CCE, Madurai

Respondent

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **17.07.2017**

Final Order No. 41231/2017

Per Bench

The appellant is aggrieved by the demand raised by clubbing the clearances of three other units namely Sri Venkateswara Industries, Sri Manipandian Industries and Sri Vinayaga Industries.

2. On intelligence gathered, the officers visited on 8/9.9.1987, the premises of four units with names Sri







Vivekananda Industries (appellant herein), Venkateswara Industries, Sri Manipandian Industries and Sri Vinayaga Industries located in the same building. All the four units were reported to be manufacturers of R.T.S. grills, Clamps, distribution boxes, eye bolts etc. used in the transmission of electricity. After gathering evidence by way of statements, verification of stocks, records, the department reached to a conclusion that the appellant herein alone was the entity behind the production of excisable goods and the other three units were dummy units started in the name of blood relatives of Sri R.D. Pandian for the purpose of evading payment of central excise duty on the goods manufactured by the appellant herein. The officers noticed 275 grills in finished condition and 330 grills in unfinished condition which were seized. A show cause notice dated 4.3.1988 was therefore issued to the appellant and to the three other units. After adjudication, the original authority vide Order-in-Original dated 22.6.1988 confirmed the differential duty of Rs.5,56,154.80 on appellant along with penalty of Rs.10,000/- under Rule 9(2) r/w 173Q of Central Excise Rules, 1944. Separate penalty of Rs.10,000/- was imposed on each of other partners namely Smt. P. Saradamani, Shri P. Jawahar, Shri P. Janar and Shri P. Janarthanam and Shri Sathish. The seized grills were ordered to be released on payment of appropriate duty. Aggrieved by



this order, the appellant had filed appeal before the Tribunal and vide Final Order Nos. 796 to 799/2003 dated 26.9.2003, the matter was remanded to the adjudicating authority who after denovo adjudication confirmed the very same demand and penalty on the appellant. Penalty of Rs.10,00 /- was imposed on each of the partners.

3. Appeal was filed by the appellant as well as the other three units as Appeal Nos. E/316 to 319/2008. The Appeal Nos. E/316 to 318/2008 were disposed by the Tribunal vide Final Order Nos. 493 to 496/2009 dated 28.4.2009 at the time of hearing of stay application, on the ground that the penalty is imposed on the partners and that the appeals filed by the units are not maintainable. Thus, the only appellant now before the Tribunal is M/s. Sri Vivekananda Industries.

4. On behalf of the appellant, learned counsel Ms. Minchu Mariam Punnose explained the facts and submitted the following arguments:-

4.1 That for the subsequent period, vide Order-in-Original No. 45/2004 dated 21.12.2004, the adjudicating authority for the period from 10.9.1987 to 28.2.1990 (for 5 separate show cause notices) had confirmed the demand of Rs.27,80,571.47 and also imposed penalties against the appellant as well as the partners besides separate ^{& other &} penalties. In appeal, against the said order, the Commissioner (Appeals) has dropped the entire



proceedings. That this would strongly show that the allegations in the show cause notices are without any substance.

4.2 She referred to the allegations in the show cause notice and also the findings in the Order-in-Original and submitted that there is no evidence to establish that the other units are dummy units of the appellant herein. The allegations leveled against the appellant is that all the units were located in nearby rooms and had no separate electricity meter and that they were using the power from the common meter. It is also alleged that the machinery / equipments are shared by different units apart from the fact that they were all using common employees. She argued that merely because the electricity was shared or the same employees were working in all the different units, it cannot be said that the other three units are dummy units for the purpose of clubbing the clearances.

4.3 That on the other hand, the appellants had produced ledger accounts to show that there was no flow back of cash. The department has proceeded merely because the units were started in the name of the blood relatives of Shri R.D. Pandian who is the proprietor of the appellant herein. The units were using ordinary hand tools that are required for manufacture of line materials and no other sophisticated machinery is required for the purpose of manufacture of the subject goods. All the



four units were manufacturers of electricity line materials and therefore the machinery necessary for production of such goods were shared by them. That this cannot be a ground for clubbing the clearances. All the units had separate central excise registration and sales tax registration. So also they had separate bank accounts with loan facility. That department has not been able to establish any cash flow and therefore the demand raised by clubbing the clearances of all four units is not legal or proper.

5. The learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order. He submitted that for the subsequent period, the Commissioner (Appeals) had dropped the proceedings on different set of facts. In the said matter, show cause notices were not issued separately to the dummy units and it is also seen noted that the SCN were vague. Taking note of these aspects and for other grounds, the proceedings were dropped specifically clarifying that the said order shall not prejudice the adjudication or decision to be rendered in the present matter which was under denovo adjudication. He submitted that vide para 20 of the impugned order, the adjudicating authority has stated that the raw material account of Sri Venkateswara Industries and the appellant were maintained in one register during the period 1982 to 83 and 1983 – 84. Again, the electricity bill of one unit



was paid from the amount of the other unit and the wages of workers of these units were paid by other units. The sales effected by Sri Venkateswara Industries were included in the sales register of the appellant and the purchase of raw material and sale of finished goods was personally managed by Sri R.D. Pandian of the appellant unit. It was also seen that the oxygen cylinders purchased in the name of the appellant was utilized by all other units. The payment of freight charges of one unit was made by other unit and the raw materials procured by one unit was diverted and accounted in other units. All the bank transactions were attended to by Shri R.D. Pandian of the appellant unit and during the absence of Shri P. Janahar, proprietor of Sri Manipandian Industries, after October 1986 (as he left India for his studies), the unit was managed by his father Shri R.D. Pandian. All the units are in the name of the members of the family. Smt. P. Saradamani who was wife of Shri R.D. Pandian is the partner of Sri Venkateswara Industries. All these aspects would show that there was not only mutuality of interest but also flow back of funds from one unit to other units. That therefore, the confirmation of duty is legal and proper and the penalties imposed are also justified.

6. We have heard the submissions made by both sides.

7. The allegation is that the appellant unit is the main unit and Sri R.D. Pandian who is proprietor is controlling all the



other three units which were floated by Sri R.D. Pandian in the name of his wife and other family members. The goods manufactured by four units in question were classifiable as RTS Grills, Clamps, eye bolts etc. which are all goods related to electricity line materials. It is also brought out that all the units were sharing the same machinery and were engaged in the manufacture of electricity line materials only and had not manufactured any other goods. Further, oxygen cylinders purchased by the appellant was used for welding by other units also. The appellant has tried to counter these allegations by stating that they have only used hand tools for manufacture of electricity line materials and no other major machineries were used by them. Further, it is also seen that the raw materials purchased by one unit has been diverted to other unit and the wages of the workers are paid by other units. These specific allegations in SCN have not been adequately explained by the appellant. It is seen that Shri R.D. Pandian was dealing with the bank transaction of other units as is evidenced by the deposits, withdrawals etc. Similarly, the orders for purchase of raw materials for all units were made by Shri R.D. Pandian. These facts point out to the strong inference that the appellant unit is the main unit and the other units are only dummy units created for the purpose of evading central excise duty by suppressing the value of clearances.



8. The fact that all the three units are situated at one place which is separated by passages; that all the four units belong to the same family members; that account of one unit is seen reflected in the account of another unit; that the raw materials are used in common or being diverted to the other unit; the use of machineries commonly by all the four units as well as the workers in all the four units being the same; the conclusion reached by the adjudicating authority, in our view is right and proper. We therefore are able to hold that the department has been able to sufficiently establish that there existed flow back of funds and mutuality of interest among four units. We find no ground to interfere with the findings made by the adjudicating authority.

9. In the result, the impugned order is upheld and the appeal is dismissed.

(Operative portion of the order was pronounced in open court)



(Madhu Mohan Damodhar)
Member (Technical)



(SULEKHA BEEVI C.S.)
Member (Judicial)

Rex

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21/8
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अपील अधिकरण / (CESTAT)
चेन्नै / Chennai

