

CASE NO.:
Appeal (civil) 6514-6515 of 2002

PETITIONER:
Commissioner of Central Excise, Coimbatore

RESPONDENT:
V. Madhu @ C.V. Maadhesh

DATE OF JUDGMENT: 04/10/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

Leave granted.

A notice was issued by the appellant on 25.7.2000 under the Central Excise Act, 1944 (hereinafter referred to as 'the Act') to M/s Komalagowre Textiles and M/s Selvaganapathy Textiles to show cause as to why duty should not be demanded jointly from them. The stand of the Department is that the respondent had floated dummy units for the purpose of removal of cotton yarn on cone manufactured by M/s Komalagowre Textiles without payment of duty during the relevant period; that M/s Komalagowre Textiles and M/s Selvaganapathy Textiles were functioning under fictitious names even though the real control and ownership of both these textile units was with the respondent herein.

A Writ Petition was filed before the High Court contending that the unit with the name of M/s Komalagowre Textiles was a registered RC holder till 31.3.1999; that the RC was surrendered and cancelled on 1.4.1999; that thereafter the unit with the name of M/s Selvaganapathy Textiles, a separate registered small scale industry unit, filed declaration and later granted RC on 14.2.2000; that the cancellation of RC of M/s Komalagowre Textiles and acceptance of the declaration and later granting RC to M/s Selvaganapathy Textiles clearly established that both the units are separate and independent; that one unit was not in existence when the other unit was functioning; that the goods seized related to the other unit; that, therefore, the issue of a joint show cause notice or initiation of joint proceedings was not permissible under law relying upon the decision of the Allahabad High Court in *Music Time Electro Cottage vs. Union of India*, 1988 (38) ELT 19 (Allahabad) wherein it had been held that joint show cause notice or joint proceedings was not permissible and therefore, directed the Department to bifurcate the notice in respect of two cases. It was also contended before the High Court that in the notice there was no allegation that even after surrender and cancellation of RC, the respondent continued to manufacture and clear the goods and thus joint liability for any such irregularity committed by the other assessee, which is a separate unit, could not be sustained and, therefore, the issue of show cause notice for payment of excise duty for the period 1999-2000 could not arise at all because as early as on 1.4.1999 the RC had been surrendered.

The Learned Single Judge, after noticing the contentions urged on behalf of either side, held that it cannot be said that the show cause notice is without jurisdiction or illegal and that the appellant has no authority at all to issue the show cause notice and, therefore, was not inclined to entertain the writ petition. It was also held that even if it is true that a portion of the duty alleged to have been suppressed and demanded is referable to both M/s Komalagowre Textiles and M/s Selvaganapathy Textiles, it is open to the respondent to raise the objections in this respect and the appellant is bound to consider the said objections. It was also noticed that if appropriate objections have been made

about issue of joint show cause notice and the appellant accepts that contention, separate show cause notices may be issued for each one of them. Thus, the learned Single Judge dismissed the writ petition.

On a writ appeal being filed, the Division Bench of the High Court noticed that the matter related to two assessment years, namely, 1.4.98 to 31.3.99 and 1.4.99 to 31.3.2000; that for the earlier period, the respondent is answerable to the show cause notice but it may have to be issued separately and relied upon the decision of the Allahabad High Court in Music Time Electro Cottage's case (supra). For the later period, it was noticed that the respondent had surrendered the previous license and a license afresh had been granted to M/s Selvaganapathy Textiles and, therefore, no allegation regarding that period is answerable by the said firm. It was further observed that in fastening of the liability it depends upon the finding of fact to be arrived at after affording opportunity and holding enquiry.

Inasmuch as a show cause notice has been issued to both M/s Komalagowre Textiles and M/s Selvaganapathy Textiles, we fail to understand as to how any prejudice is caused to either of the parties. At the stage of issuance of show cause notice, particularly when the view of the Department is that one firm is a fictitious business firm or a dummy of the other, it would be easier and more appropriate to examine the matter together. Therefore, it was not necessary to split up the show cause notice in respect of M/s Komalagowre Textiles and M/s Selvaganapathy Textiles. However, if appropriate objections are raised before the authorities concerned, the same may be examined and, if necessary, separate proceedings may be held in regard to M/s Komalagowre Textiles and M/s Selvaganapathy Textiles. When the stand of the Department is that one firm is a fictitious business firm or a dummy of the other, it was not proper for the High Court to have interfered at the stage of issue of show notice. Liability to pay duty would depend upon the finding of facts which can be arrived at after adjudication is complete. Therefore, the show cause notice for the period 1.4.99 to 31.3.2000 could not have been quashed by the Division Bench. We, therefore, set aside the order made by the Division Bench and restore that of the learned Single Judge. The appeals, therefore, stand allowed accordingly. But in the circumstances of the case, there shall be no order as to costs.