

CASE NO.:
Appeal (civil) 6161 of 1999

PETITIONER:
M/S. Supreme Washers (P) Ltd.

RESPONDENT:
The Commissioner of Central Excise, Pune

DATE OF JUDGMENT: 04/12/2002

BENCH:
N.SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:
J U D G M E N T

(With C.A.Nos.6152/99 & 6157/99)

SANTOSH HEGDE, J.

The sole question for our consideration in these appeals is whether the Central Excise & Gold (Control) Appellate Tribunal ('the Tribunal') was justified in accepting the contention of the respondent Department that the three appellants herein are so inter-connected and have mutuality of interest among themselves, as to club their production for the purpose of either denying them the benefit of the exemption limit or to assess them as one unit for the purpose of levy of central excise duty.

The tribunal while dismissing the appeals of the appellants herein agreed with the collector of Central Excise, Pune that the three units (the appellants herein) procured raw materials together, they had common credit facilities from the suppliers, had common stock accounting and planning, they are inter-dependents in manufacturing operations, had common stock of raw materials and semi furnished goods, were having common use of the machinery between the three units, were having common marketing arrangements and free flow of finance between themselves. On these basis, the tribunal concurred with the Collector that the three units in fact are so inter-related that the Department was justified in clubbing their total production as production from one unit for the purpose of Central Excise Act.

In these appeals, Shri Joseph Vellapally, Learned Senior Advocate appearing for the appellants contended, even according to the material relied upon by the respondents, it is clear that the three units are independent units, though, may be having certain common facilities for the sake of convenience, which does not make the unit inter-related. At any rate, it was argued on behalf of M/S. Supreme Washers (P) Ltd., the appellants in Civil Appeal No.6161 of 1999 that it being a limited company, by virtue of the Circular Nos. CER(5)-Central Excise dated 1.3.1956, the said appellants could not have been clubbed with the two other appellants, because the said circular being a statutory circular is binding on the Department.

Learned Attorney General, appearing for the respondent countering the first part of the argument of the learned counsel for the appellants submitted on the basis of the factual material that was available before the Tribunal, the Tribunal has come to the just conclusion that there was mutuality of the interest between all the three units. And it being a pure question of fact, the said finding does not call for interference by this court. In

regard to the applicability of the Circular referred to herein above, the Learned Attorney General submitted, since this point was not urged before the Tribunal, then for that limited purpose, the matter may be remanded back to the Tribunal.

Having heard the learned counsel for the parties and perusing the records, we are in agreement with the finding of the Tribunal that there is mutuality of interest between the appellants. The reliance placed by the Tribunal on facts like the three companies having common management under Shri S.L. Raheja, having common procurement of raw material, having common stock accounting and planning, having inter-dependence in manufacturing operations, having common stock of raw materials and semi finished goods, having common use of machinery between the three units, having common marketing arrangements and free flow of finance between three units cumulatively indicates inter-dependence of the three units with each other as also inter-relationship, cumulatively establishes the appellants inter-relationship and inter-dependence with each other, hence, the arguments of the appellants on this factual score must fail.

In regard to the second contention of the appellant in Civil Appeal No.6161 of 1999, it is seen from the Circular dated 1.3.1956, which according to the appellants have been reiterated by another subsequent Circular No.6/82 dated 29th of May, 1992 by the Central Board of Excise Customs, New Delhi that a limited company should be treated as a separate entity for the purpose of exemption limit. If that be the position in law, then there may be some justification for the appellant to urge, so far as M/S. Supreme Washers (P) Ltd. is concerned, it being a limited company, its production can not be clubbed with the other units. However, since this aspect of the case and applicability of the Circulars referred herein above was not brought to the notice of the Tribunal, we are in agreement with the suggestion made by the Learned Attorney General that it will be just and proper to remand this matter, for this limited purpose, to the Tribunal for examining the applicability of the Circular relied upon by the Appellants, M/S. Supreme Washers (P) Ltd.

For the reasons stated above, we confirm the finding as to the inter-relationship between the three units, as found by the Tribunal, and remand the appeals back to the Tribunal for the limited purpose of deciding the applicability of the Circular referred herein above.

The appeals are, therefore, allowed and remanded for the fresh disposal by the Tribunal in accordance with law to the extent indicated herein above.