



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CEA No. 50 of 2004 (O&M)
Date of Decision: May 06, 2024**

M/s Jaybee Industries

..... Appellant

vs

Customs, Excise and Gold (Control) Appellate
Tribunal and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Yogank Goyal, Advocate, for the appellant.

Mr. Saurabh Goel, Senior Standing Counsel, for the respondents.

SANJEEV PRAKASH SHARMA.J. (ORAL)

This is a civil appeal preferred by the appellant-M/s Jaybee Industries assailing the order dated 04.03.2004 passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi, (hereinafter referred to as 'CESTAT') whereby it upheld the order dated 06.11.2000 passed by the Commissioner of Central Excise, Gurgaon, confirming the demand of duty of Rs.3,01,518/- under Section 11A of the Central Excise Act, but has reduced the penalty amount from Rs.03 lacs to Rs. 01 lac.

2. Learned counsel submits that two firms, one set up at Bathinda and another at Panchkula had two separate identities and were different entity altogether. Although the two firms may have the same partners, it cannot be said that they were a single partnership firm and the Tribunal has fallen in error that two partnership firms, by a common name i.e. Jaybee Industries at Bathinda and Jaybee Industries at Panchkula were a single partnership firm.



3. Learned counsel for the appellant submits that Panchkula firm was entitled to exemption and it cannot be said that clearance of goods of unit of Malout at Bathinda were evaded and the Central excise duty to the tune of Rs.3,01,518/- had been evaded.

4. Learned counsel has relied upon the decision taken by the Apex Court in case titled as “*Assistant Collector of Central Excise and Cus. Vs. J.C. Shah*”, 1978(2) ELT 317, decided on 02.09.1962 wherein the Apex Court had found that the two factories by separate partnerships, having identical partners, cannot be said to be of same person as claimed by the appellant. He also relied upon the judgment passed by Rajasthan High Court in Civil Writ petition No.4766/1990 decided on 24.01.1992 in case titled as *Renu Tandon Vs. Union of India*”, 1993 (66) ELT 375 in support of his submission. Learned counsel has also challenged the show cause notice and submits that various records, alleged, should be eliminated in the show cause notice and failure to mention the same would vitiate the entire proceedings. He has also relied upon 1995 Supp(3) SCC 322 case titled as “*Collector of Central Excise Vs. H.M.M. Limited*” and Case titled as “*Commissioner of Central Excise, Chennai Vs. Urbane Industries*”, 2015(325) ELT 726.

5. Learned counsel for the appellant has also submitted that there was no intention to evade duty as there was no *mens rea*, therefore, the proceedings could not have been invoked against him and penalty could not be imposed. He also relied upon the judgment passed by Hon’ble the Supreme Court in case titled as *Cosmic Dye Chemical Vs. Collector of Central Excise*, 1995 (6) SCC 117 and *Continental Foundation Joint Venture Holding, Nathpa, H.P. Vs. Commissioner of Central Excise, Chandigarh-I* (2007) 10 SCC 337, in support of his contention.



6. Learned counsel for the respondent-revenue has supported the order passed by the Apex Court in Civil Appeal No.6161 of 1999, decided on 04.12.2002 in case titled as *M/s Supreme Washers (P) Ltd. Vs. The Commissioner of Central Excise, Pune, 2003(1) SCC 142.*

7. We have carefully considered the submissions and also perused the record.

8. The admitted facts which are on record are that M/s Jaybee Industries, Bhatinda exceeded the exemption limit and was, therefore, paying duty at the normal rate. But M/s Jaybee Industries, Panchkula did not exceed the exemption limit and therefore paid duty at the concessional rate under notification No.1/93-CE dated 28.2.1993 and followed prescribed procedures.

9. Show cause notice was issued to the appellant on 02.08.1999 for recovery of excise duty of Rs. 3,01,518/- for the period 1994-95 and 1995-96. The said notice was duly replied by the appellant. However, Additional Commissioner Central Excise vide order dated 6.11.2000 held that the appellant firm was not entitled to benefit of exemption under notification dated 28.02.1993 and demanded duty amounting to Rs.3,01,518/-. The Additional Commissioner also imposed penalty of Rs.3,00,00/- under rule 173Q and penalty of Rs. 50,000/- each on both the partners.

10. The appeal was filed by the appellant against the order dated 06.11.2000 of the Commissioner Central Excise (Appeals) Delhi. The Appellate Authority vide its order dated 06.06.2003 upheld the order dated 6.11.2000.

11. Aggrieved by orders dated 06.11.2000 and 06.06.2003, the appellant approached the CESTAT. The CESTAT vide order dated



04.03.2004 has partially accepted the appeal filed by the appellant and its partners. Demand of Rs. 3,01,518/- was upheld and penalty was reduced to Rs. 1,00,000/- and penalty imposed on the partners was set aside.

12. We find that as per the notification providing for full exemption on concessional rate of duty, it has been provided that the said notification shall apply on the aggregate value of clearance of all the excisable goods for whom consumption only in circumstances other than where a manufacturer has one or more factories and from any factory by one or more manufacturer, exceeds Rs. 200 lacs in preceding financial year, the same was increased w.e.f. 01.04.1995 to Rs.300 lacs vide notification dated 16.03.1995. We find that the notification would only be granting exemption in the cases where the manufacturers have cleared overall amount less than Rs.200 lacs/300 lacs as the case may be. If the production from different factories and clearance is altogether more than the said amount, the exemption cannot be allowed.

13. We also find that both the individuals, who were partners of the firm Jaybee Industries, have established one factory at Bathinda and other at Panchkula by the name of same firm. In these circumstances, their contention that they had entered two different partnership deeds for the purpose of setting up two factories is found to be only to get the benefit with wrongful intention. We are in agreement with both the Appellate Authorities to conclude that infact the Jaybee Industries consisting of N. K. Aggarwal and Pardeep Aggarwal as partners was a single partnership firm having two factories one at Bathinda and another at Panchkula and, therefore, they were required to include the factories of goods from both the units and the exemption could not have been claimed on the said basis and the recovery of non-payment of duty for the period from July 1994 to May, 1995 is found to be correct and in order.



10. So far as the question regarding the other issue relating to the applicability of Section 11 A is concerned, we find that the same has not been raised at the stage of appeal below and the same could not be taken up in appeal before us.

11. Hence, the appeal fails, as such dismissed.

12. All pending applications, if any, stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

May 06, 2024
sonia arora/vs

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No