

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.**

Date of Hearing/Order: 17.9.2018

Appeal No. E/51451/2018-SM

(Arising out of Order-in-Appeal No. DLH-CE-25-2018 dated 11.4.2018 passed by the Commissioner (Appeals), Central GST, New Delhi)

M/s Shri Mahavir Industries

Appellant

Vs.

CGST, Delhi-III

Respondent

Appearance

Ms. Rinki Arora, Advocate

- for the appellant

Shri P. Juneja, DR

- for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 52993/2018

Per Archana Wadhwa:

After hearing both the sides, I find that proceedings for confirmation of demand, on the ground of clandestine removal, were initiated against one M/s Diwan Industries, a partnership firm. Inasmuch as the proprietor of the present appellant M/s Mahavir Industries, Shri Prabhat Jain was one of the partners in M/s Diwan Industries, notice also proposed confirmation of demand against M/s Mahavir Industries i.e. the present appellant. The demand to the extent of around Rs. 32 lakhs was confirmed against M/s Diwan Industries along with imposition of penalty of identical amount of Rs. 36 lakhs and demand to the tune of Rs. 75,444/- was confirmed

against M/s Mahavir Industries along with imposition of penalty of identical amount.

2. The matter was taken up by both the assesseees before Commissioner (Appeals), who confirmed the order in original impugned before him. On subsequent appeals filed before Tribunal, it is seen that both the assesseees were directed to deposit a part amount, as a condition of hearing of their appeal in terms of the provisions of Section 35F. As M/s Diwan Industries did not deposit, their appeal was dismissed for default.

3. As far as the present appellant is concerned, they took up the matter before the Hon'ble High Court of Delhi, by way of filing a writ petition which was rejected, and as a consequence, the appellant deposited the directed amount in question. On such deposit, their appeal was taken up for final disposal and vide Final Order No. 50135/2017 dated 6.1.2017, their appeal was allowed.

4. As a consequence of their allowing of their appeal, they became entitled to the refund of the amount pre-deposited by them in terms of Section 35F. Accordingly, they approached their jurisdictional Central Excise Assistant Commissioner for refund of the amount in question.

5. Vide his order dated 20.9.2017, the Assistant Commissioner observed that the appellant is entitled to the refund of the said amount. However, he further held that inasmuch as there was outstanding amount against M/s Diwan Industries, and inasmuch as the proprietor of the present appellant is a partner in that firm, the sanctioned refund was adjusted against the dues from M/s Diwan Industries. The order of the original adjudicating authority was upheld by Commissioner (Appeals) and hence the present appeal.

6. On going through the impugned order, I find that the Revenue's stand is that since the proprietor of the present unit is a partner in M/s Diwan Industries and the arrears against the partnership firm can be recovered from the partners, the appropriation of the refund sanctioned to the proprietary unit is legal and proper. However, I find that there is no dispute about the fact that proceedings were initiated against M/s Mahavir Industries by treating the same as an individual manufacturer. On success of their appeal before Tribunal, such proprietary unit is admittedly entitled to the refund of the amount pre-deposited by them before the Tribunal. A proprietary unit is an individual legal entity and any refunds due to the proprietary unit cannot be adjusted or appropriated towards the demand which may be pending recovery against an another independent legal entity, of which the proprietor of unit is a partner. It has to be kept in mind that the present

proceeding are not recovery proceeding against the partnership firm so as to make the recoveries independently from the partners also. The dispute relates to the refund of the duty deposited by a proprietary unit and on success of their appeal before Tribunal such refunds have to be sanctioned to the proprietary unit. Any such adjustments against the dues of a partnership firm is neither justified nor proper nor legal.

7. In view of the above, I find no merits in the impugned orders of the authorities below. Accordingly, the same are set aside and appeal is allowed with consequential relief.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

RM