A M/S PUNJAB FOOTWEAR LIMITED, JALANDHAR

v.

COLLECTOR OF CENTRAL EXCISE, CHANDIGARH

OCTOBER 26, 1994

B [R.M. SAHAI AND N.P. SINGH, JJ.]

Excise—Notification No. 88 of 1977 CE dated 9.5.1977—Claim of benefit of—Manufacturing of footwears—Agreement between two factories—Workers of one factory working within precincts of another factory—For purpose of considering claim of benefit of Notification number C *of workers working in both factories to be taken into consideration.*

The process of manufacturing of footwears is partly done by the appellant and partly by M/s Stepwell Industries Ltd. on behalf of the appellant on the basis of an agreement entered into between the appellant and the said M/s Stepwell Industries Ltd. In view of the terms D **of the agreement, the workmen of M/s Stepwell Industries Ltd. were working on the machines installed within the premises of the appellant, for purpose of the part of the manufacture of footwears. They were also entitled to use the electricity from the meter of the appellant and had to pay the charges for the same. The agreement says that the possession of** E **the premises shall remain with the appellant, but M/s Stepwell Industries Ltd. shall have 'licence of entering the premises to work on the machines'. It was also stipulated that 'the maintenance of the machinery and its operation would be the responsibility' of M/s Stepwell Industries Ltd.**

F **In respect of the claim of the appellant for benefit under Notification No. 88 of 1977 dated 9.5.1977, the Collector of Central Excise held that the number of workmen directly employed by the appellant as well the number of workmen employed by M/s Stepwell Industries are to be counted and as the number of workmen of both the factories exceeded 49, the appellant was not entitled to the benefit of** G **aforesaid Notification. On appeal, the Customs, Excise and Gold (Control) Appellate Tribunal affirmed the findings of the Collector and dismissed the appeal.**

This appeal has been filed against the Order of the Appellate Tribunal. The appellant submitted that in view of the proviso (i) to the H **Notification, the appellant was entitled to the benefit of the Notification**

because the footwears were being produced by or on behalf of the appellant which shall be deemed to be manufacturer in one or more factories. It was pointed out that M/s Stepwell Industries shall not be deemed to be a factory belonging to the appellant, and as such the workmen of M/s Stepwell Industries should not be counted for purposes of granting or refusing benefit of the Notification.

Dismissing the appeal, this Court

HELD : In view of the terms of the agreement between the appellant and M/s Stepwell Industries Ltd., the workmen of M/s Stepwell Industries had to work within the premises of the factory of the appellant. In this background, it cannot be said that the workmen of M/s Stepwell Industries were not working within the precincts of the factory of the appellant. As such while calculating the number of workers, their workers of M/s Stepwell Industries have to be taken into account. There is no dispute that if the workers of M/s Stepwell Industries are taken as working within the precincts of the appellant, then the number of workers was in excess of 49, mentioned in proviso (i) of the Notification No. 88 of 1977 CE dated 9.5.1977. The benefit of the Notification in view of proviso (i) can be extended only to such manufacturers in whose factory including the precincts thereof, not more than 49 workers are working on any day of the preceding 12 months. As within the precincts of the factory of appellant more than 49 workers were working including the workers of M/s Stepwell Industries, the appellant shall not be entitled to the benefit of the notification. (205-G-H, 206-A)

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3723 of 1986.

From the Judgment and Order dated 10.6.86 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in A.No. E.L. (SB) (T) A. No. 945 of 1981.

V. Sridharan, T. Ramesh, and V. Balachandran for the Appellant.

Joseph Valla Pally and A.K. Srivastava for the Respondent.

The Judgment of the Court was delivered by.

N.P. SINGH, J. M/s Punjab Footwear Limited, the appellant, have been manufacturing footwears. It appears that the process of manufacturing

A of footwears is partly done by the appellant and partly by M/s Stepwell Industries Limited on behalf of the appellant on the basis of an agreement entered into between the appellant and the said M/s Stepwell Industries Limited.

In respect of the claim for benefit under Notification No. 88 of 1977
B CE dated 9.5.1977, the Collector of Central Excise, Chandigarh by his order dated 21.8.1980 held that the number of workmen directly employed by the appellant as well as the number of workmen employed by M/s Stepwell Industries Limited are to be counted and as the number of workmen in both the factories exceeded 49, the appellant was not entitled to the benefit of aforesaid Notification.

C

The Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as 'the Tribunal') affirmed the aforesaid finding of the Collector saying that for purposes of granting or refusing the benefit of the Notification aforesaid the number of workers working in the factory of the appellant as well as the factory of M/s Stepwell Industries have to be
D taken into consideration and as the number of workmen exceeded 49, the appellant was not entitled to the benefit of the aforesaid Notification. On that finding, the appeal of the appellant was dismissed. The relevant part of Notification No. 88 of 1977 read as follows:

> "In exercise of the powers conferred by sub-rule (1) of Rule
E 8 of the Central Excise Rules 1944, and in suppression of the notification of the Government of India in the Department of Revenue and Banking No. 103/76-Central Excise, dated the 16th of March, 1976, the Central Government hereby exempts footwears falling under sub-item (1) of Item No. 36 of the first schedule to the Central
F Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon:
>
> Provided that :-
>
> (i) Such footwear is produced by or on behalf of a
G manufacturer in one or more factories, including the precincts thereof, wherein not more than 49 workers are working, on any day of the preceding 12 months, or
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> (ii) the total equivalent of power used in the manufacture of such footwears by or on behalf of a manufacturer in one or
H more factories does not exceed 2 Horse Power."

The learned counsel appearing for the appellant urged that in view of proviso (i), the appellant was entitled to the benefit of Notification in question because the footwears were being produced by or on behalf of the appellant which shall be deemed to be manufacturer in one or more factories. It was pointed out that M/s Stepwell Industries shall not be deemed to be a factory belonging to the appellant, as such the workmen of M/s Stepwell Industries should not be counted for purposes of granting or refusing benefit of the Notification. It was also submitted that the expression 'such footwears' occurring in proviso (i) has to be read with reference to the footwears manufactured directly by the appellant in their own factory and the number of workmen working in the factory of the appellant shall be the determining factor.

Before this aspect could be examined in detail, the learned counsel appearing for the respondent, drew our attention to the agreement dated 1.8.1977 between the appellant and M/s Stepwell Industries Limited. It was pointed out that in terms of the said agreement, M/s Stepwell Industries Limited was working on the machines installed within the premises of the appellant, for purpose of the part of the manufacture of footwears in respect of which contract had been given to said M/s Stepwell Industries Limited. Not only the said M/s Stepwell Industries were to use the machines of the appellant, but they were also entitled to use the electricity from meter of the appellant and had to pay the charges for the same. The agreement says that the possession of the premises shall remain with the appellant, but M/s Stepwell Industries shall have 'licence of entering the premises to work on the machines'. It further says that M/s Stepwell Industries 'shall use the electricity from the meter' of the appellant and 'shall pay the electricity used by them'. It was also stipulated that 'the maintenance of the machinery and its operation would be the responsibility' of M/s Stepwell Industries.

In view of the aforesaid terms of the agreement, the workmen of M/s Stepwell had to work within the premises of the factory of the appellant. In this background, can it be said that the workmen of M/s Stepwell Industries were not working within the precincts of the factory of the appellant? As such while calculating the number of workers, the workers of M/s Stepwell Industries have to be taken into account. There is no dispute that if the workers of M/s Stepwell Industries are taken as working within the precincts of the appellant, then the number of workers was in excess of 49, mentioned in proviso (i) of the Notification aforesaid. The benefit of the Notification in view of proviso (i) can be extended only to such manufacturers in whose factory including the precincts there of, not more

A than 49 workers are working on any day of the preceding 12 months. As within the precincts of the factory more than 49 workers were working including the workers of M/s Stepwell Industries, the appellant shall not be entitled to the benefit of the Notification.

According to us, the Collector as well as the Tribunal have rightly
B come to the conclusion that the appellant is not entitled to the benefit of Notification in question. Accordingly this appeal fails and is dismissed. However, there will be no order as to costs.

A.G. Appeal dismissed.