

**Central Excise: Excise officials not to take action that would stop production**

CLAUSE 6 of Notification 35/2001-CE (NT) reads - (6) De-registration: Every registered person, who ceases to carry on the operation for which he is registered, shall de-register himself by making a declaration in the form specified in Annexure-III and depositing his registration certificate with the Superintendent of Central Excise.

**Annexure-III contains the assessee to submit the following declaration -**

I/We also declare that there is no government due pending against us and that there is no demand pending against us under Central Excise Act, 1944 (1 of 1944) and rule made thereunder pending as on the date of surrendering the Registration Certificate.

The appellant vide their letter dated 18/6/2009 surrendered their registration certificate to the Superintendent of Central Excise. As per the provision of Rule 9 of the Central Excise Rules, 2002, read with Notification No. 35/2001-CE(NT) dated 26/6/2001 in the annexure III, appellant stated that their factory operating from the said premises was closed since 2003 and that they are not having any activity for past six years. They also stated that they had been issued a SCN dated 3/5/2002 demanding duty of Rs.2,52,09,483/- which is still pending adjudication before CCE, Thane-I. Further, on a stamp paper of Rs.100/- they submitted an undertaking with the Supdt. CE, Range-IV, Kalyan-IV Division, Thane-I, to pay the dues, if any, arising out of the proceedings initiated vide the impugned SCN.

They also declared that the duty has been paid in respect of all excisable goods manufactured and remaining in the factory, which are liable for duty and there is no Government dues pending against them as on that date and requested that their Central Excise Registration be treated as cancelled and surrendered and consequently allow the buyer of the said premises M/s. Monometer Chemical Industries Pvt. Ltd to apply for new Central Excise Registration for carrying out their manufacturing activities on the same premises.

A SCN came to be issued on 25/9/2009 for rejection of the request made by the appellant on the ground that the same was premature and not legal and proper.

However, the Adjudicating authority, after considering the submissions, held that the surrender and de-registration of Central Excise Registration was proper, legal and valid.

The Revenue appeal was allowed by the Commissioner (A) and, therefore, the appellant is before the CESTAT.

The appellant submitted that they have complied with the procedure prescribed for surrender of registration certificate and as mandated by notification 35/2001-CE(NT); that as of now no confirmed demand is pending against the appellant, therefore, factory premises was sold to another company who have been issued registration certificate; In separate proceedings, the buyer company has been issued new registration certificate after the Tribunal intervened 2015-TIOL-04-CESTAT-MUM; that at one time same premises cannot remain registered in the name of two persons, therefore, once registration in the name of buyer company M/s. Monomer Chemical Industries Pvt. Ltd has been issued, then registration of appellant will not survive.

The AR submitted that as there is demand case pending, therefore, to safeguard revenue, the appellant cannot be de-registered. Reliance is placed on the decision of the Bombay High Court in case of Manibhadra Processors & Dharmapal Satyapal Ltd 2007-TIOL-2167-CESTAT-KOL, according to which the registration can be surrendered only after all dues for registered premises have been discharged.

The Bench observed -

- In the present case, the appellant ceased to carry on the operation in factory since 2003. They also filed declaration in prescribed form in Annexure III along with registration certificate. After making above compliance, the appellant shall be de-registered. I observed that there is no provision to deny the de-registration in a case when the assessee ceased to be a manufacturer. The department denied de-registration only on the ground that there is case of demand of duty is pending against the appellant.
- I find that the case is in the stage of show cause notice and there is no confirmed demand against the appellant, therefore, entire basis for denial of de-registration is wrong and not acceptable. Moreover there is no provision in the Rule 9 or Notification No. 35/2001 CE(NT) that in case any duty demand is pending against assessee his registration shall continue or he shall not be de-registered but only requirement is to file declaration in Annexure III form.
- In the present case new registration has been granted in terms of Tribunal Order in case of M/s. Monomer Chemical Industries Pvt. Ltd. . Even as per ruling of the Bombay High Court in case of Manibhadra Processors one premise cannot be registered in name of two different persons. The High Court also held that person holding earlier registration certificate must surrender registration certificate in respect of that premises then only new person can get registration in respect of that premises.
- The High court held that compliance of provision of Notification 35/2001-CE(NT) is necessary to prevent anybody from walking away from registered premises without discharging duty liability. In the present case, firstly new company M/s. Monomer Chemical Industries Pvt. Ltd has been issued new registration, therefore, the present appellant cannot be retained as registered person.
- As regard compliance of the provision of the notification, requirement is only to file declaration, the appellant have filed declaration in Annexure III and disclosed the entire fact including the status of their case which is pending at show cause notice stage.
- Secondly, appellant even though, there is no confirmed demand, in view of show cause notice, executed indemnity bond wherein they have undertaken to discharge the Central Excise duty liability as and when it arises in future.
- Therefore, after making substantial compliance of the provision there is no reason to deny the de-registration of the appellant. Even, if it is assumed that appellant's registration should not be cancelled, in such case new registration to any other person on the same premises cannot be given and if that be so, then no operation can be carried out in the said premises.

- It is a national loss to stop production in any factory premises. The law cannot be such by which production in this country can be suspended for any reason.

Holding that the Adjudicating authority had legally and correctly ordered for de-registration of the appellant and accepted the surrender of registration, the order-in-appeal was set aside and the appeal was allowed.