

Commissioner of Central Excise Vs. Mil Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-27-1998

Reported in : (1998)(60)ECC660

Judge : S Peeran, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Mil Industries

Judgement :

1. This is an appeal by revenue against the order-in-appeal No. 3/95(M) dated 10.01.95 passed by the Collector of Customs and Central Excise (Appeals).
2. The short point considered therein was whether the cost of the mould used in the manufacture of Electrolyser Gaskets should be included in the value of the goods manufactured and if so, by what mechanism. In the impugned order the Ld. Collector held that the proportionate cost of the mould should be ascertained having regard to the number of gaskets manufactured or the possible number of gaskets which can be manufactured during the prospective life cycle of the mould and had, therefore, remanded the matter to the original authority.
3. On the other hand, the revenue in their appeal contends that since under Section 4 of the Act and Rule 5 of the Central Excise (Valuation) Rules, 1975 the assessable value of such moulds should include all additional considerations received from the customer, and since the appellants have collected Rs. 85,000/-

over and above the declared price of the Electrolyser gaskets towards cost of the moulds, therefore, as this constitutes additional consideration, hence the entire cost of the mould of Rs. 85,000/- should be included in the assessable value of these quantity of gaskets covered under this order.

They contest the amortisation of this cost and addition of cost on pro rata basis spread over a period of time ending when the mould is no longer usable.

4. Heard the Ld. Consultant Shri Vijayaraghavan, who submits that this matter has since been decided in the case of Flex Industries Ltd. v.CCE, 'A' of the Tribunal had held that the rational principle of proportional value addition has been approved by the Central Board of Excise and Customs in their Circular No. 170/4/96-CX dated 23.01.96, has been accepted. Ld. Consultant drew our attention to para 6 of this said order, wherein, a formula was also enunciated, which reads as follows: 6. The principle underlying the Board clarification would apply to apportionment of cost of cylinder used in the manufacture of printed pouches. It may be considered that cylinder is used and consumed in the manufacture of printed pouches; but it is not used in the sense in which raw material is used in manufacture of a product; in such case, the conversion or use of raw material is done quickly and it is easy to correlate a definite quantity of raw material and its value with a definite quantity of finished product and its value. In the present case, the use of cylinders is in such a manner that, it is spread over a considerable period and over a very large quantity or number of finished products. To illustrate, we assume that a set of four cylinders of the value of Rs. X can be used in manufacture of ten lakhs printed pouches. Hence it is reasonable to regard that Rs. $X+10$ lakhs is the proportionate value of cylinder which is used in the manufacture of a single printed pouch and this fractional value has to be added to the value of printed pouch. However, during a particular period, the use of the set of cylinder may not be exhausted as only 4 lakhs printed pouches are manufactured during the period. If so, it has to be regarded that Rs. $(X+10 \text{ Lakhs}) \times 4 \text{ Lakhs}$ is the proportionate value of cylinder utilized in the manufacture of finished products during the period and only this value can be added to the value of printed pouches. This rational principle of proportional value addition has been approved by the Board and we are of the opinion that Board was right in doing so.

This has to be arrived at after making a realistic estimate of the expended life and capability of the cylinders and determining the appropriate proportion of the value of cylinders to be added to the value of printed pouches. The conclusion arrived at by the lower authorities that entire value of the cylinders is to be added to the value of printed pouches manufactured during the relevant period without reference to the expected life and capability of the cylinders has to be set aside and the matter has to be considered afresh by the respective adjudicating authorities. This is subject to the plea of bar of limitation raised in one of the appeals.

5. He further submitted that in the case of M/s. Devi Polymers Pvt.

Ltd. the South Zonal Bench had followed the decision in an earlier case of Shardlow India Ltd. reported in 1997 (70) ECR 545 and held that cost of moulds and dyes are to be amortised over the life span thereof and had remanded the matter for redetermination accordingly.

6. Ld. J.D.R. reiterated the grounds of appeal and argued that since the value of Rs. 85,000/- of the mould was received in lumpsum and not over a period spread over time, therefore, the entire value needed to be added to the assessable value of the product.

7. We have considered the arguments of both the sides. We find that this issue has already been decided in the decisions of Flex Industries Ltd. as well as in the case of M/s. Devi Polymers Pvt. Ltd. cited supra. The Board itself has in the Circular cited supra clearly indicated that since the mould is capable of repeated commercial exploitation in manufacturing process, therefore, the rational of amortisation would be applicable while calculating the price of the product manufactured using such moulds. Since these decisions are squarely applicable to the facts of the case, therefore, we humbly follow the same and apply the ratio thereof. We find that there is nothing in the revenue's appeal which merits interference with the order-in-appeal.