

Century Rayon Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-06-1998

Reported in : (1999)(82)LC610Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Century Rayon

Respondent : Cce

Judgement :

1. Appellant is absent in spite of notice of hearing, but has sent a request for decision of the appeal on merits. We have heard Shri K.Shiv Kumar, JDR and perused the papers.
2. By order-in-original dated 30.5.1989, the Assistant Collector of Central Excise, Kalyan declined to approve revised price list No. 16/87 dated 3.6.1987 said to be effective from 22.4.1986. The Collector (Appeals) dismissed the appeal preferred against the above order by the assessee. Hence, the present appeal.
3. The facts of the case are clear from the list of dates furnished by the appellant the contents of which are supported by copies of documents produced by the appellant. Appellant, as job worker, was receiving purchase orders from suppliers of raw materials and on that basis manufactured excisable goods and returning the finished products to the suppliers, receiving job charges. Till September, 1985, appellant was paying duty on assessable value arrived at as the sum total of value

of raw materials and job charges inclusive of profit margin, on the basis of clarification in RAC meeting of Thane Collector held on 20.12.1984. By show cause notice dated 26.7.1985 the Range Superintendent required the appellant to pay duty on the value shown in the final invoices raised by the supplier of raw materials who was the receiver of finished products. On 24.9.1985, appellant submitted a letter of protest stating that duty had been paid on the correct assessable value and duty was not liable to be paid on the price charged by the suppliers. The letter also stated that duty was paid as instructed without prejudice and subject to protest. Subsequently, appellant filed three refund claims for refund of the excess duty paid.

The three refund claims were filed on 26.5.1986. It appears that the refund claims are pending even now. Appellant was till then following the invoice price procedure under Notification No. 120/75 which was in force till 28.2.1986. On the basis of the advice of the Range Superintendent, appellant filed price list in Part II effective from 21.4.1986 on the basis of contract entered into with Buckau Wolf India Ltd. The fourth refund claim was preferred on 6.9.1986. On 27.12.1986, the Assistant Collector purported to approve the price list effective from 21.4.1986 by a simple endorsement on the price list and without considering the merits of the controversy raised by the appellant regarding the correct assessable value and also without considering the pending refund claims.

4. The Range Superintendent wrote a letter dated 28.5.1987 to the appellant informing him that the fourth refund claim cannot be considered unless the appellant files revised price list declaring the assessable value on the basis of cost. Pursuant to this letter, on 6.6.1987, appellant filed revised price list furnishing the cost of raw materials, job charges, etc. On 5.8.1987, Superintendent issued show cause notice proposing to deny approval to the revised price list.

Though the appellant resisted this notice, the Assistant Collector on 30.5.1989 passed an order denying approval of the revised price list.

This order has been confirmed by the Collector (Appeals).

5. The above narration of facts leads to clear conclusions. Till September, 1985 appellant was paying duty on the assessable value arrived at on a basis which had been subsequently approved by the Supreme Court in the Ujagar Prints case 1988 (38) ELT 535 (SC) : 1988 (19) ECR 578 (SC) : ECR C 1281 SC and 1989 (39) ELT 493 (SC) : 1989 (21) ECR 1 (SC) : ECR C 1347 SC. Subsequently, on the direction of the Superintendent, appellant started paying duty on the wholesale price charged by the receiver of the finished products. Appellant periodically filed refund claims. Appellant was informed that if one of the refund claims was to be considered, revised price list declaring the cost based value should be filed. Following this advice, appellant filed a revised price list in 1987 effective from April, 1986. That has been rejected now on the ground that there cannot be revision of the price in 1987 with retrospective effect from April, 1986.

6. Approval of a price list cannot stand in the way of a valid demand under Section 11A of the Central Excise Act, 1944; nor can it stand in the way of a valid refund claim under Section 11B of the, Act. A refund claim can be filed on the ground of excess duty having been paid, notwithstanding the approved price list being in force. When a refund claim is filed notwithstanding the approval order of the price list, it is the duty of the proper officer to consider the refund claim on merits. If the proper officer comes to the conclusion that excess duty has been paid on higher assessable value, he has to order refund notwithstanding the previous approval order suggesting higher assessable value. The same considerations apply to a demand under Section 11A of the Act. Where duty has been paid on the basis of approved price and where the proper officer is satisfied that the approved price is not the correct price, it is open to him to initiate action under Section 11A of the Act and in such a case he has to independently consider what should be the correct assessable value, without being bound by the previously approved price. In this view, it was the duty of the proper officer in this case to have taken up the refund claims for consideration without insisting on a revised price list being filed. The purpose of the revised price list suggested by the Superintendent was only to enable the proper officer to settle the controversy raised by the appellant and to decide the correct basis for determination of the assessable value. Such an exercise could very well have been conducted in deciding the refund claims. In this view, it was wholly improper for the Superintendent to have informed the appellant

that the refund claim cannot be considered unless a revised price list is filed with retrospective effect. Having called upon the appellant to file such a price list, it would not be fair to reject it on the ground that such a revised price list cannot be filed. As we have indicated earlier, it was unnecessary to file the revised price list. The controversy should be taken up for consideration and decided in adjudication proceedings arising in the refund claims.

7. We, therefore, hold that the revised price list filed at the instance of the Superintendent was wholly unnecessary and, therefore, the proper officer was really not required to pass an order of approval. The impugned orders are, therefore, not correct and are set aside. The authority competent to deal with all the refund claims filed by the appellant shall take up the refund claims for adjudication and dispose of the same in accordance with law after considering the applicability of the Ujagar Prints formula enunciated by the Supreme Court and after giving the appellant an opportunity of hearing. The appeal is thus allowed.

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