B.S.L. Ltd. Vs. Cce

B.S.L. Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/15200

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-16-1999

Reported in : (1999)(83)LC874Tri(Delhi)

Judge : G Brahmadeva, R T Lajja

Appellant : B.S.L. Ltd.

Respondent : Cce

Judgement :

1. These are three appeals filed by M/s. B.S.L. Ltd. involving a common issue and therefore, they are taken together and are being dispose of by this common order. The dispute is in respect of determining the value of the goods, which were captively consumed.

2. It was submitted on behalf of the appellants that the varieties of yarn manufactured by the appellants are captively consumed in the manufacture of fabrics, some of the varieties are sold by them from their factory. It was submitted that they filed price declaration as required under the Central Excise Rules, 1944. For the yarn captively consumed in the factory, the appellants declared a value arrived at on the basis of cost construction method. According to the Department since factory price is ascertainable, that should be taken as basis even with reference to the goods, which were captively consumed.

3. It was contended that difference in the price of yarn captively consumed and sold in the market arises mainly due to three factors namely: 4. Further, it was said that micro level is an indicative factor of the fineness of the fibre. The lower the micron level, the finer is the wool and higher is the price. In the yarn that is captively consumed, the wool of micron level 26.5 and 27 are used in the purposes of manufacture. In the yarn that is sold in the market, yarn of micron level 24.5 is used. (The use of the wool with a particular type of the micron level is indicated in the Raw Material Requisition Slip at pages 205-222 of the Paper Book. The invoices also indicate the micron level of the yarn that is sold-pages 237 and 244 of the paper book). The authorities below have rejected the plea of the party holding that the appellants have not been able to establish that the goods were not comparable. On the other hand, the burden lies on the Department to prove that the goods are comparable and this burden has not been discharged. Furthermore, evidence has been adduced by the party in support of their contention that the goods sold at the factory gate are of different quality compared to the goods, which were captively consumed, which has not been observed by the appellate authority.

5. On going through the facts and circumstances and respective impugned order, Shri K. Shiv Kumar, JDR submitted that he has no objection to remand the matter to the jurisdictional Asstt. Commissioner to examine the matter afresh.

6. On going through the submissions made by both the sides and after perusal of the records, we are of the view that the issue involved in these three cases are required to be re-examined by the jurisdictional Asstt. Commissioner. He is directed to examine the evidence adduced by the assessee in support of their contention that the goods which were captively consumed, were different from the goods which were sold at the factory and has to give a clear finding after providing an proper opportunity to the appellants to present their case. Thus, these three appeals are allowed by way of remand. Ordered accordingly.