

Bhilwara Processors Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-04-1999

Reported in : (1999)(99)LC852Tri(Delhi)

Judge : G B Deva, N T C.N.B.

Appellant : Bhilwara Processors Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal is levy of Central Excise duty on processing charges. Arguing the appeal, learned Counsel Shri R.K.Kapoor submits that according to Supreme Court judgment in Ujagar Prints v. Union of India and Ors. reported in 1989 (39) ELT 493 (SC) : 1989 (21) ECR 1 (SC) : ECR C 1347 SC, the processor is to pay duty only on the processing charges up to the factory gate of the processor. In the instant case the appellants were receiving fabrics from several suppliers and were returning the goods after processing. They were collecting only processing charges from the supplier of the fabrics.

However, they used to pay duty on value inclusive of the post manufacturing expenses. Shri Kapoor submits that on merits duty paid on amounts in excess of the processing charges plus value of the fabrics was liable to be refunded to them. Their refund claims in this regard have been rejected partly on the ground that claims amounting to about Rs. 83 lakhs were time barred and, that in respect of the remaining claims the goods have been correctly assessed at the ex-factory

price.

Shri Kapoor submits that findings on both the counts are erroneous and not sustainable. With regard to the finding that the claims were time barred, he submits that the payments have been made under protest. He refers to page 15 of the order of the Assistant Collector where it has been admitted that the ground for protest was that Central Excise duty was chargeable only on the processing charges. This would clearly show that the protest was on the valuation of the goods and not on any other ground. With regard to the second ground, Shri Kapoor submits that the appellants' concern was to pay duty on a value which included the cost of the fabric and cost of processing and not on any other count, as per the aforesaid judgment of the Supreme Court. The denial of refund is contrary to this decision and is, therefore, liable to be set aside.

2. Learned SDR Shri Prabhat Kumar submits that in respect of fabrics received by them from M/s Bhilwara Synthetics, the appellants were rendering service beyond processing the goods and the goods were also handed over to the trade from the appellant's own premises. Therefore, the order is right in holding that the ex-factory price at the appellant's premises should be the basis of valuation. Shri Prabhat Kumar also submits that the refund claim in any case would be liable to be rejected as no proof has been produced that the duty levied has not been passed on to the ultimate buyer by the appellant.

3. In his reply, Shri R.K. Kapoor submits that no facts are available on the record relating to passing on the duty liability and therefore the claim cannot be rejected only on presumption that the duty liability would have been passed on.

4. We have perused the record of the case and have considered the submissions made by both the sides. Admittedly, the appellant is a processor and therefore is liable to pay duty in terms of the Supreme Court's decision on value including the cost of fabric and the cost of processing. Elements subsequent to these are to be excluded. We also find that the duty payments in this case was under protest and therefore, the rejection of the claim on ground of time bar was not correct. However, the eligibility for the refund is required to be examined after ascertaining facts as to whether the duty liability has been passed on to the buyer by the

appellants. The appeal is therefore, allowed by way of remand for reconsideration with regard to unjust enrichment as provided in Section 11B of the Central Excise Act.

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