

Supreme Industries Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-31-1999

Reported in : (1999)(84)LC172Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Supreme Industries Ltd.

Respondent : Cce

Judgement :

1. This is an appeal filed by the appellant against the decision dated 27.1.1994 made in Order-in-Appeal No. PCJ-22/B. 111/94 whereunder for the purpose of the valuation of the product the excise duty paid on input raw material in regard to which Modvat credit availed of was included.

2. The appellants were engaged in the manufacture of plain polyethylene films falling under sub-heading 3920.31 of the CETA from the plastic raw materials, namely LDPE films and HOPE films falling under sub-heading 3901.10 and 3901.20 on which appropriate excise duty was paid. The appellants opted for Modvat credit as both the raw materials as well as the final product. The said polyethylene films were captively utilised by transferring the films to their printing department. They did not pay the duty on the polyethylene films second time as the films suffered duty already. They filed a price list claiming that normal price was not available under Section 4(1)(a) of the Act but they worked out the normal price under Section 4(1)(b) read with Rule 6(b)(ii) of the Central Excise (Valuation)

Rules. The Assistant Collector issued a show cause notice dated 2.12.1992 proposing to add the Modvat credit availed of on the input raw materials for the purpose of valuation in the final product. By the order-in-original dated 4.1.1993 the Assistant Collector denied the pleas made by the assessee for not including the Modvat credit availed on input raw materials for the purpose of valuation against which an appeal was filed. In the order-in-appeal the Collector (Appeals) sought to follow the judgment of the Tribunal in Sree Srinivasan Foundry v.CCE which sought to follow the judgment of the Supreme Court in the case of Empire Industries Limited 1986 (20) ELT 179 : 1985 ECR 1169 (SC) : ECR C 797 SC and also the Tribunal's judgment in Khaitan Fans (P) Ltd. . Hence the present appeal.

3. Shri B.N. Rangwani, learned consultant appearing on behalf of the appellants, contended that for purpose of valuation of the final product the excise duty paid on input raw materials and in regard to which Modvat credit was availed is not includible while arriving at the cost of intermediate product used for captive consumption under Section 4(1)(b) of the Act. He also relied on the judgment of the larger bench of the Tribunal in the case of Dai Ichi Karkaria Ltd. v. CCE .

4. Learned DR, Shri A. Ashokan reiterated the lower authorities' orders.

5. We have considered the rival submissions. We are of the view that the is-k sue has been settled by the decision of the larger bench cited by the learned consultant. In the said judgment they have approved the judgment of the Tribunal in the cases of tncab Industries and Atic Industries Ltd. . In We therefore hold that duty paid on input in regard to which Modvat credit was availed of by a manufacturer is not includible in the assessable value of the final product under Section 4(1)(b) of the Act and Rule 6(b)(ii) of the Rules. However, in every case of captive consumption it has to be verified whether the cost of input declared includes the excise duty paid on inputs or not. If the declared cost does not include the duty paid on input the same cannot be deducted again.

6. Hence following the said judgment we accept the appeal of the appellants and allow the same setting aside the impugned order.

Consequential relief, if any.

