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Alleli and Co. P. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-1999

Reported in : (2000)(89)LC435Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Alleli and Co. P. Ltd.

Respondent : Cce

Judgement :

1. When these applications came up for hearing, it appeared that the main appeals could be taken up for disposal. Both sides agreeing that, this was done.

2. We have heard Shri R.J. Parakh, Advocate for the appellants and Shri K.M. Patwari, for the revenue.

3. The appellants are processors of fabric on job work basis. From time to time they filed classification lists and price lists and on due approval, processed and cleared the fabrics. Along with the price lists a declaration was attached showing construction of the assessable value. The cost construction showed separately the inclusion of profits at the rate of 10%.

3. 9 Show Cause Notices were issued during the period 29.11.1991 to 5.8.1992. These SCNs were identically worded. In each Show Cause Notice the charge was made that assessees had failed to add 10% in the assessable value as manufacturing expenses. On this count each Show Cause Notice demanded

differential duty. In some cases it was alleged that the 10% addition sought to be made, was on account of non-inclusion of manufacturing expenses and manufacturing profits. The assessees filed replies to the SCNs. In the replies to the SCNs it was claimed that in each cost construction statement, they had shown manufacturing expenses and manufacturing profits separately. Several judgments were cited claiming that the requirement of the law having been satisfied no further addition was warranted. The Assistant Commissioner dealt with all SCNs, in one order. In his findings he recounted the salient features of the judgment, of the Supreme Court in the case of Ujagar Prints 1988 (19) ECR 578 (SC) : ECR C 1281 SC which held that the valuation should be the sum total of the value of the grey fabric plus the jobwork charges plus manufacturing profits and expenses. On these touch-stones of the Supreme Court judgements, he examined the contested price lists filed by the assessees. The analysis made by him in his order reads as follows: To analyse this in light of S.C. judgement in case of M/s. Ujagar Prints, it is to be first seen whether the assessee has attempted to determine nearest possible A.V. from the available costing factors.

I observe that value of grey fabrics is correctly declared as the same was not disputed in the SCN. The processing charges which are inclusive of processors profit would also remain undisputed. The manufacturing expenses and manufacturing profit which are alleged to have not been added would be found covered in total costing of the fabrics in value of grey fabrics + processing charges + 10% notional profit. The 10% notional profit already added in the value of grey fabrics and processing charges would take care of elements like transportation, processing freight, insurances, interest, shrinkage etc. and profit. I, therefore, accept the A.V. declared by the assessee in all the price lists filed during the period for which all the 9 SCNs have been issued and hold that additional 10% on account of manufacturing expenses and manufacturing profit need not be added.

On these observations he dropped the proceedings instituted under the Show Cause Notice.

4. The jurisdictional Commissioner then caused an application to be filed before the Commissioner (Appeals), the ground of appeal reads as under: As per the

Supreme Court's decision in case of Ujagar Prints the assessable value for fabrics processed by a job worker is the sum total of cost of grey fabrics, job charges, manufacturing expenses and manufacturing profit. While the job charges represent the cost incurred on processing and also profit, job work, inventory cost, cost incurred for transportation and Octroi of grey fabrics, insurance charges etc. which need to be included, irrespective of whether job worker has incurred the same. In the instant case assessee paid duty only on grey fabrics cost and job charges. The SCN's proposed addition of 10% of the above cost in assessable value towards manufacturing cost and profit. The assessable value consists of only job charges and grey fabrics. Cost has been reconfirmed by Range Supdt. in his letter No. RI/Aleli/SCN/91 dt. 12.3.1992 addressed to A.C. Div. IV. In spite of which the A.C. Div IV has dropped the demand.

The Commissioner (Appeals), set aside the order of the Assistant Commissioner on the following ground.

It is now well settled in terms of S.C.'s decision in case of Ujagar Prints that assessable value for fabrics processed by a job worker is the sum total of cost of grey fabrics at the hands of the processor, job charges, manufacturing expenses and manufacturing profit. While the job charges represent the cost incurred on processing and also profit for job work, there are other manufacturing expenses such as inventory cost, cost incurred for transportation and octroi of grey fabrics, insurance charges, etc.

which need to be included, irrespective of whether or not the job worker or the grey fabric supplier has incurred the same. Similarly manufacturing profit also needs to be added. Since in the instant case assessee paid duty only on grey fabric cost and job charges, the SCNs proposed addition of 10% of the above costs in assessable value towards manufacturing cost and manufacturing profit. That the assessable value declared in the instant case consisted of only job charges and grey fabric cost has been reconfirmed by Supdt. in his letter No. RI/Aleli/SCN/91, dated 12.3.1992 addressed to the Assistant Commissioner. In spite of the above the Assistant Commissioner dropped the demands accepting the assessee claim that 10% had already been included in the assessable value.

5. We find that in the various price lists filed by the assessees from time to time, the statement as to how the cost was constructed. The cost construction statement showed job charges separately and also the profits separately apart from the price of the grey fabric. The various Show Cause Notices merely alleged that in the price lists manufacturing expenses and the manufacturing profits had not been added. The SCNs did not specify as to which manufacturing charges and as to what portion of the manufacturing profits had been omitted by the assessees from their cost-construction statement. It was a bare allegation without any explanation.

6. The SCNs do not put the respondent on notice as to what is alleged against him. In such a notice the charges must be made clear. The logic and the reasoning behind the charges must be spelt out. The background material on which the charges and reasoning is based has also to be specified and the assessee has to be given copies of the documents, on which reliance is placed. A notice which fails to contain any one or more of these requirements cannot be a valid Show Cause Notice. Tested on these factors we find that the SCNs do not pass the test.

7. Being the jurisdictional officer, the A.C. was conversant with the issues and was aware as to what was required to be added and what was actually added. With his knowledge he analysed the position as extracted above and found for the assessees. He even defined the various counts of expenses which are added by the assessees in the overall terminology "processing charges". In the application before the Commissioner, for the first time, the description of the cost which were allegedly not added by the assessees have been brought out. In our opinion, an application against an Assistant's Collector's order filed before Commissioner (Appeals) cannot be a substitute for a Show Cause Notice. This is an attempt to enlarge upon and correct the failures of the SCNs. The Id. Commissioner was wrong in not noticing this but merely endorsed the ground made in the appeal before him.

8. Shri Parakh also showed us another Order-in-appeal dated 13.10.1993 upholding the disposal of the refund claim filed by the assessees on the ground

that in computing the manufacturing expenses certain expenses need not have been added. The dispute was on incidental expenses of transportation of grey fabric, insurance charges, inventory costs etc. The Commissioner approved of the finding of the Assistant Commissioner that these expenses would in turn stood included in the manufacturing expenses. This order although passed in separate proceedings thus justified the belief of the Assistant Commissioner in making the order thereafter challenged by the jurisdictional Commissioner.

9. On consideration of the factors and on perusal of the concerned documents we find for the appellants. These appeals are allowed with consequential relief if any. . .

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