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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-2000

Reported in : (2000)(117)ELT439TriDel

Appellant : S. Kumars Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The appellants, M/s. S. Kumars Limited are engaged in the processing of fabrics, and processed fabrics are liable to Central Excise on ad valorem basis. Part of the above processing is carried out on their own, on grey fabrics belonging to them, and the remaining processing is undertaken on job work basis on grey fabrics supplied to them by others. The dispute involved in the impugned order, which covers the period of 1-9-1985 to 30-9-1989, is the valuation of the processed fabrics for the purpose of payment of Central Excise duty.

2. The impugned order has demanded a differential duty of over Rs. 3.8 crores as against the amount of Rs. 4.8 crores demanded in the show cause notice. In addition, the impugned order also has demanded interest on the duty demanded. In respect of the liability to penalty the impugned order states that this position would be taken up separately, if need be, at the appropriate time.

3. The demand made in the order is on the basis that several firms constituted the S. Kumars group and these units being either related to S. Kumars or being intermediary/dummy set up by the group, the transactions among these units

cannot be treated as independent commercial transactions and the prices charged among them cannot constitute the basis for levy of Central Excise duty.

4. The appeal contends that valuation in the order is contrary to settled law. It has been submitted that Central Excise valuation for fabrics processed on job work basis remains concluded by the decision of the Supreme Court in the case of Ujagar Prints v. UOI [1989 (39) E.L.T. 493] and the Apex Court has held that the value should be arrived at by adding to the cost of the grey fabric, cost of processing and processor's profit. It has been submitted that the valuation principle laid down in this judgment of the Apex Court makes no distinction between goods processed for persons and unrelated persons and the decision is applicable in all cases. It has therefore been contended that the adjudicating officer was clearly in error in holding that this decision of the Supreme Court did not apply to the appellants in respect of the fabrics processed by them as processor on job work basis.

5. Another submission of the appellant is that the computation of the duty amount is grossly erroneous and that has led to massive increase in the duty demand. It is submitted that the show cause notice itself did not contain any detailed computation of the duty demand. During the course of adjudication proceedings, they were supplied calculation sheets running into more than 30,000 entries on 1165 pages.

Verification of these calculation sheets revealed errors in around 10,000 cases. Only part of the errors were cross-checked with supporting documents between the Central Excise officers and the appellants' staff. The appellant had submitted detailed calculation sheets on 3rd June, 1998. However, as the adjudication order was issued on 16-6-1998 itself, all the errors were not taken up for correction.

(The Commissioner was transferred in the middle of the proceedings and he was in a hurry to complete the adjudication). In their letter dated 3-6-1998, they had asked for further hearing after the computation errors were corrected. The same was also not allowed. It has been submitted that the errors in computation are of grave nature and affected duty amounts seriously. The errors were also in relation to variety of fabrics which had a bearing on the classification and rate of duty.

Thus, a 30 paise difference in value was changing duty liability from Rs. 3.5 per sq. mtr. to Rs. 8 per sq. mtr. The appellants have submitted that these glaring errors were required to be considered and corrected to arrive at the correct amount of differential duty, even if it is held that the order is maintainable and that the case is required to be remanded to the adjudicating authority in view of the large volume of calculations involved.

6. With regard to treating of the firms as dummies, the appellants have submitted that some of these firms are in existence from 1943,1948,1951, 1952,1954, etc. Therefore, allegation of their being dummies created to evade Central Excise duty cannot lie.

The appellants have also submitted that the order in respect of penalty is not tenable at all. The Commissioner should have followed the decisions of the Hon'ble High Court that penalty is not imposable rather than putting of an order on penalty to a later date in view of the pendency of an appeal.

7. With regard to the valuation of fabrics manufactured by the appellants on their own, it has been submitted that irrespective of what is the price taken as the basis for valuation, the same should be treated as cum-duty realisation and duty amount should be deducted from the gross price realised for the purpose of arriving at the assessable value. It has been submitted that this position remains settled by the decisions of the Tribunal in the case of Srichakra Tyres Ltd. and Ors.

v. Collector of Central Excise, Madras [1999 (32) RLT 1-CEGAT (Larger Bench)].

8. We have heard the ld. SDR on behalf of the Revenue. He submitted that the Commissioner has correctly held that valuation of goods manufactured on job work basis cannot be done based on the Ujagar Prints judgment (supra) as the parties involved in the instant case are related persons and that judgment would not apply to such cases. In particular, reference has been made to page 35 para 13(ii) of the order. He has also referred to the finding in the impugned order that the transactions between the parties is not on principal to principal basis.

9. With regard to valuation of processed fabrics on job work basis, the Supreme Court clarified the legal position as under in its clarificatory judgment in Ujagar Prints v. UOI "... it is made clear that the assessable value of the processed fabric would be the value of the grey cloth in the hands of the processor plus the value of the job work done plus manufacturing profit and manufacturing expenses whatever these may be which will either be included in the price at the factory gate or deemed to be the price at the factory gate for the processed fabric. The factory gate here means the 'deemed' factory gate as if the processed fabric was sold by the processor. In order to explain the position it is made clear by the following illustration: if the value of the grey cloth in the hands of the processor is Rs. 20/- and the value of the job work done is Rs. 5/- and the manufacturing profit and expenses for the processing be Rs. 5/- then in such a case the value would be Rs. 30/-, being the value of the grey cloth plus the value of the job work done plus manufacturing profit and expenses. That would be the correct assessable value.

2. If the trader who entrusts cotton or man-made fabric to the processor for processing on job work basis would give a declaration to the processor as to what would be the price at which he would be selling the processed goods in the market, that would be taken by the Excise authorities as the assessable value of the processed fabric and excise duty would be charged to the processor on that basis provided that the declaration as to the price at which he would be selling the processed goods in the market would include only the price or deemed price at which the processed fabric would leave the processor's factory plus his profit. Rule 174 of the Central Excise Rules, 1944 enjoins that when goods owned by one person are manufactured by another the information is required relating to the price at which the said manufacturer is selling the said goods and the person so authorised agrees to discharge all the liabilities under the said Act and the Rules made thereunder. The price at which he is selling the goods must be the value of the grey cloth or fabric plus the value of the job work done plus the manufacturing profit and manufacturing expenses but not any other subsequent profit or expenses. It is necessary to include the processor's expenses, costs and charges plus profit but it is not necessary to include the trader's profits who gets the fabrics processed because those would be post-manufacturing profits." 10. This judgment makes no distinction between the fabrics processed for related persons and

others. Even otherwise, we are not able to find any merit in the finding of the Commissioner that valuation based on cost of production shall not be applicable in respect of goods manufactured for related parties. There appears to be no basis for such a finding in the relevant Rule. Rule 6(b)(ii) of the Central Excise Rules relates to assessment of goods based on cost of production. In fact, this Rule is specifically with regard to goods manufactured and captively consumed by the manufacturer himself. Thus, if a method is prescribed in law for valuation of goods consumed by the manufacturer himself, the same method cannot be held to be not applicable for the assessment of goods manufactured for related persons. Therefore the Commissioner's finding on this ground is required to be set aside and the valuation of fabrics processed on job work basis should be carried out on the basis of cost of production as laid down in the judgment of the Supreme Court in Ujagar Print's case.

11. Reference in particular has been made on behalf of the Revenue to the finding in para 13(ii) of the Commissioner's order. Para 13(ii) mentions that notices No. 22-34 are "intermediary/dummy concerns". This observation's basis and validity under Central Excise law is not clear.

Central Excise valuation law makes no separate provision in respect of "intermediaries" Therefore, the findings based on this observation have no legal support.

12. The appellants' complaint that there are a large number of errors in the computation of duty amount is also required to be redressed. As the demand relates to a period of about five years and several varieties of fabrics are involved, the differential duty, if any, is required to be worked out carefully and the method of computation stated in a manner understandably to all concerned. Since the computation sheets running into several hundred pages had been supplied only during the course of adjudication and as the appellant had pointed out numerous mistakes, adjudication should have been completed only after these errors are checked and the computation reconciled. Failue to do the same at the adjudication stage involves denial of an opportunity to the appellant to effectively defend his case. The matter is required to be reconsidered for this reason also.

13. The assessee's representation regarding treating the gross realisation as cum-duty is also based on the settled law on this question. Additional realisations, if any, are to be treated as gross value and assessable value is to be worked out after giving necessary deduction for the duty element. Further, additional realisations are not to be added to the assessable value, but only to the price.

Therefore, this submission of the appellants also merits acceptance.

14. The order regarding penalty in the impugned order is rather strange. It reads :- "61. As regards application of penal provisions of the CEA in the matter of levy and collection of duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, SKL had approached the Hon. High Court of Delhi by way of a Writ Petition.

The Hon'ble High Court in turn quashed the SCN relating to penal action proposed. Therefore, the notices have contended that they are not required to make any submission in this regard.

62. However, the Union of India, has filed a SLP in the Supreme Court against this judgment. Though this Apex Court has admitted the said SLP but refused to grant a stay against this order. Hence, it becomes a binding upon the undersigned. Moreover, the Union of India has, in the meantime, already amended suitably the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 to overcome the effect of the said judgment. I, therefore, do not pass any order in their regard, and this portion would be taken up separately, if need be, at the appropriate time." 15. It is settled law that the judgment of a Court, directly on the point, is conclusive upon the same matter, between the same parties and is final and binding. That there is a provision for appeal from that order or that an appeal has, in fact, been filed against that order, is no ground for not following the same. Therefore, the order passed by the Commissioner that in view of the pendency of the SLP in the Supreme Court against the Delhi High Court judgment, the penalty question shall be taken up separately, if need be, at the appropriate time, is totally illegal and is required to be set aside. We do so.

16. In view of the errors in valuation and computation of duty amount as discussed earlier in this order, the case is remanded to the Commissioner for a fresh decision in accordance with the directions contained in this order. Appeals are disposed of on these terms.

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