

Mutal Industries Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-24-2000

Reported in : (2000)(92)LC546Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Mutal Industries Ltd.

Respondent : Cce

Judgement :

1. These two applications are filed by the same applicant and have similar facts. These are, therefore, being disposed of by this common order.

2. On hearing Shri J.J. Bhatt, Sr. Counsel appearing with Shri T.Gunasekharan, Advocates for the applicants and Shri K.L. Ramteke for the revenue, it appeared that the issue for consideration being specific, the appeal themselves could be taken up at this stage. This was done by granting waiver of the pre-deposit of duty amounting to Rs. 94,08,257.38 in Appeal No. E-3190/V/99-Mum (E/Stay-2352-V/99-Mum) and penalty of equal amount as well as duty amounting to Rs. 9,89,504/- and penalties of Rs. 2,84,600/-, in Appeal No. E-3212-V-Mum (E/Stay-2384-V/99-Mum).

3. The assessee manufactured plastic articles using moulds supplied by their buyers. In certain cases, such moulds were manufactured by them, where the cost was recovered from the buyers of the plastic articles.

These moulds were periodically repaired and reconditioned.

4. Show Cause Notices were issued, seeking to add the value of the moulds as well as the cost incurred in the repairs or reconditions of such moulds when calculating the assessable value. The assessee contested such addition. The Assistant Collector relied upon Board's Circular No. 170/4/96-CX dt. 23.1.1996. He confirmed the amounts, following the statement in the show cause notice that the addition of such cost was by a percentage of six. In the same manner he added to the assessable value the cost of repairs and reconditioning also.

5. Shri Bhatt relied upon case law to the effect that the cost of such manufacturing aids given by the buyers was not includible when computing the assessable value of the resultant products. He cited the Tribunal judgment in the case of Creative Cartons v. CCE 1999 (106) ELT 79 as also the unreported judgment in Velpack Industries's case in Order No. 370/98-WZB/C-II dated 21.2.1998 in appeal No. E/6222/92-A. We find that in the recent judgments, this view has been departed from. In the following judgments one of which dates prior to the judgment cited by the Id. Counsel, dies and moulds and blocks supplied by the buyers which were manufactured by the job workers, the cost of which was recovered from the buyers, were held to be elements in the computation of the assessable value of the resultant products.

6. Shri Bhatt states that the computation of the increase in the assessable value @ 6% as been shown in the show cause notice, is not correct. In Annexure A, to show cause notice dated 3.4.1991, the observation is made that the mould is capable of producing 2.5 lakhs articles. He refers to and relies upon the certificate given by a Chartered Engineer, which was referred to in the Memorandum of appeal before the Commissioner of Customs, according to which an average mould should produce two million articles or in the alternative would have a life of 10 years. He submits that the Commissioner did not take this alternative submission into account. As a result, the factum of loading was wrongly calculated. We have seen the calculation made in the SCN and the Chartered Engineer Certificate. The SCN does not show the basis for the calculation but it appears to be the percentage taken in pursuance of some order for production of

Electrical Photo Machines.

7. We find that the life span of a mould or a die or any such apparatus would depend upon the construction, the materials used therein, the conditions in which it is operated as also the product it is designed to produce. These are merely some of the factors to arrive at the figure of the possible production out of a particular mould. In this situation time it is necessary to take the assistance of an expert.

Such assistance was taken by the assesseees and their submissions are leading to a different figure than that arrived at by the Department.

Since the proportionate cost of such dies etc. has to be included in the assessable value of the resultant products, this particular aspect of calculation is very vital. It is unfortunate that the Id. Commissioner did not take this important factor into consideration.

8. We, therefore, allow these appeals, set aside the impugned order and remand the proceedings back to the jurisdictional Assistant Commissioner. He shall go into the aspect of productive life of such moulds etc. as also their capacity to produce specified number of products. In doing so he is free to take the assistance of such experts as he requires. The assessee also shall place expert advice before him.

9. Normally I do not give any order separately. But here since two orders passed by the Bench in which I was a Member were cited and to impress upon the difference in facts between the cases cited and the cases under consideration, I am writing this assenting order. Two orders have been cited. They were (i) Velpack Industries Ltd. v. CCE vide Order No. 370/98-WZB/C-II dtd. 21.2.1998 in Appeal No. E/6222/92-A and Creative Cartons v. CCE 1999 (106) ELT 79. In those cases it was decided by the Tribunal that printed blocks received by assessee on behalf of customer for use in printed cartons need not be included in the value of the final product manufactured by the assessee.

10. In Velpack Industries Ltd. case paragraph 3 of the order inter alia states as follows: 3. Shri J.M. Patel for the appellant raised following contentions.

He said that the printed blocks sometimes are purchased directly by the customers and given to the appellants. Some times the appellants also purchased this and recovered the same from his customers. At all material times it is argued by Mr. Patel that printing blocks were never manufactured by the appellant. Excise duty is on the manufacturer since printing blocks were never manufactured by the appellants duty could not be levied on them. Moreover he also stated that the non-payment of duty on clearance of blocks in the alternate proportionate value of the blocks should be included in the assessable value when used in printing for each carton should be made and each printing is used several times of printing.

When we decided the earlier cases it was never brought to our notice the judgment of the Tribunal in Flex Industries' case 1997 (70) ECR 194 which decision has been followed by the Tribunal in other decisions where the Tribunal has held in favour of the Department. Had the decision been brought to our notice we might have dealt the case in the decision which we gave. However, seeing the facts of the case of Velpack Industries as well as Creative Cartons facts may not be identical as that of the case before us. In the cases decided by us earlier i.e. Velpack Industries's case (supra) blocks were never manufactured by the assessee. Here it is not so.

11. In this connection it is useful to refer the judgment of the Calcutta High Court decision in Orissa Concrete and Allied Industries Ltd. v. UOI where at paragraph 11 thereof the Id. Single Judge has held as follows: 11. It is now a trite law that a decision is an authority on what it decides and not what can logically be deduced therefrom. In Sree Govind Properties and Investment P. Ltd. v. Air Transport Corporation reported in 1998 (3) ICC 149, a Division Bench of this Court held: Each case has to be considered on its own facts. The Supreme Court in Regional Manager v. Pawan Kumar Dubey held: "One additional or different fact can make a world of difference between conclusions in the case even when the same principles are applied in each case to similar facts.

In Quinn v. Leathern reported in 1900-1903 ALLER (rep) page 1 at page 7 it was held: I have very often said before that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the

expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logically at all. I think that the application of the two propositions renders the decision of this case perfectly plain, notwithstanding the decision in *Allen v. Flood*.

Because of these observations, we have to hold that the instance case has to be remanded. I wholeheartedly agree with the order proposed by my Id. Brother.

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