

Standard Industries Ltd. Vs. Commr. of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-10-2000

Reported in : (2000)(70)ECC37

Judge : J T J.H., G Srinivasan

Appellant : Standard Industries Ltd.

Respondent : Commr. of Central Excise

Judgement :

1. On hearing Shri Parthasarathy, Ld. counsel for the applicants and Shri Gaitonde, DR for the department, it appeared that at this stage, the appeal itself could be taken up for disposal. Both sides agreeing, this was done.

The appellants manufactured yarn which is consumed captively in the manufacture of fabrics. Price list was filed in terms of Rule 6(b)(ii) of the Central Excise (Valuation) Rules, 1975. As regards the inclusion of notional profit, it was claimed by the assesseees that what should be taken into account was the profit, if any, earned by the textile division and not the profits of the company in its entirety as reflected in the balance sheet. The Asstt.

Commissioner declined to accept this submission and confirmed differential duty on adding the margin of profit as reflected in the annual balance sheet. The assesseees then filed an appeal before the Commissioner (Appeals) and also an application for waiver of pre-deposit. The Commissioner (Appeals) passed orders

on the stay application without inviting the assesseees. In his order he directed the assesseees to deposit 50% of the disputed amount. The assesseees then filed a writ petition in the Bombay High Court. The High Court found the order to be stereotyped, mechanical and without reason.

The High Court set aside the order and directed the Commissioner (Appeals) to hear the assesseees on the stay application afresh and to pass a reasoned order. The notice from the Office of the Commissioner specifically stated that the assesseees had been directed to appear for "personal hearing on stay application only".

Shri Parthasarathy Ld. Counsel appeared before the Ld. Commissioner.

The Commissioner passed the impugned order disposing of the appeal before him. Hence, the present appeal and the application.

3. Shri Parthasarathy submits that in terms of the High Court's order, the Commissioner was required to restrict himself in disposal of the stay application and not disposing of the main appeal.

4. This Bench felt that there may not be anything wrong in the procedure. In a number of instances, the Tribunal had disposed of the main appeal at the stage of hearing of the stay application. Shri Parthasarathy, however, submits that in doing so, the Tribunal puts the assessee/applicant on alert and then only proceeds. It is his submission that he had appeared and advanced arguments only for the limited purpose of granting stay and that he had not taken any material for advancing any argument on the merits of the case. It was his submission that if he was directed to appear for the final hearing, he could have the opportunity to present his case with the assistance of the financial statistics.

5. We have considered the submissions and we have gone into the case law on the subject of includibility of margin of profit in the case of products captively consumed in terms of the said rules. Shri Parthasarathy submits that in terms of the language of the rules, what is required to be seen is not the profitability of the entire organization but the profit which the assesseees normally earned on the sale

of goods captively consumed. On perusal of the subject rule, we find that the language does not support this contention. However, in several judgments of the Tribunal, this particular question does not seem to have been addressed. Thus in the case of Kanoria Chemical Industries 1995 (80) E.L.T. 795(Tri), which was placed on record by Shri Parthasarathy, direction was made for adding margin of profit as shown in the balance sheet. The same was the ratio in the case of Greaves Foseco Ltd. 1997(93) E.L.T. 233. We however, find that in the case of National Litho Press 1997(91) E.L.T. 140, the Tribunal had observed that the margin of profit earned on the sale of final products could not be made on the basis of computing the margin of profit in the case of intermediate goods. This was done after referring to Kanoria Chemical Industries judgement cited above.

6. We thus find that in the cited cases the main issue in dispute had not been settled. Since this is the sole issue, we would like the Ld.

Commissioner himself to settle this dispute. It is likely that the appellants may be able to procure more case laws. It is likely that the issue had already been taken for discussion in certain circulars of the Board such as Circular No. 258/92/96-CX, dated 30.10.1996.

7. We, therefore, allow this appeal, remand the proceedings back to the jurisdictional Commissioner (Appeals). Shri Parthasarathy, undertakes to make submissions on the main appeal before him so that the issue could be disposed of fully. For the sake of removal of doubt, we direct the Commissioner (Appeals) to proceed with the issue on merits without insisting on pre-deposit.

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