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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-19-2000

Reported in : (2000)(70)ECC805

Appellant : Divyalakshmi Plastic Indus. Pvt.

Respondent : C.C.E. and C. (A)

Judgement :

This is the party's appeal against the above captioned impugned order No. V. 2A (VAL-RP) 248/91 dated 30-8-1993 praying for quashing, and setting aside the same, and for necessary relief, as per appeal petition, may be granted.

1. The facts of the case in brief are that appellant manufactures Plastic Satranj falling under Chapter heading 4001.00 of CETA, out of duty paid raw material received on their account and sold to third parties on principle to principle basis at the price claimed by appellant in the price list filed from time to time. The appellant also received duty paid raw materials from M/s. Supreme Industries, Bombay for manufacture of Satranj on payment of job charges; including the manufacturing cost and manufacturing profit of appellant. It had filed price list for both above two categories of Satranj manufactured. As far as Satranj manufactured on their account, appellant had declared the price list at which they sell the goods, to third party on principle to principle basis at factory gate, In respect of Satranj manufactured on job charges basis from the raw material received by M/s. Supreme Industries, the appellant filed price list along with Chartered Accountant certificate showing the cost of raw materials, manufacturing expenses of appellant

including the profit margin of appellant and on the basis of Chartered Accountant certificate the price lists were being filed and approved by the Assistant Collector, (2) show cause notice was issued to appellant on 1-3-90 in respect of Satranj manufactured on job work basis that a real price under Section 4 would be the price at which such Satranj was sold in wholesale market by M/s. Supreme Industries and why this price should not also be made applicable for the goods manufactured by them from their own raw material being the saleable price. The appellant replied it on 31-3-90.

Personal hearing was held. Shri Om Prakash representative of appellant appeared and argued the matter. After going through all the material on records Order-in-Original was passed by Assistant Collector, Central Excise and Customs, Jalgaon on 2-7-91 holding that "since the entire branded goods were being sold to M/s. Supreme Industries and the delivery of the goods was at Bombay, and not at factory gate the assessable value will be the price at which goods were sold by Supreme Industries to their dealers, after allowing deduction of transportation charges incurred from the appellants factory to their Customer's factory gate at Bombay, as the first wholesale transaction of the goods has taken place from Supreme Industries and not from appellant factory.

Deduction of Central Excise duty from such charges was also allowed, if already included in the price of Supreme Industries. He however refused deduction regarding loading and unloading charges, interest on receivable for lack of details, marketing and selling expenses as they were liable to be included in the assessable value and of special packing charges as it was a ordinary packing only. It was observed by Assistant Collector, in respect of goods manufactured by appellant from their own materials, since the factory of goods have been sold to M/s.

Supreme Industries, and since there is no difference in quality of goods manufactured by them and the quantity of goods manufactured for M/s. Supreme Industries, these goods will also be assessable at the price of M/s. Supreme Industries after allowing necessary deductions.

In the appeal preferred by the appellant, Collector (Appeals) Central Excise & Customs, Pune partly allowed under the impugned order. Hence this appeal.

3. In support of appeal, Shri B.N. Rangwani, the Ld. Consultant for the appellant has contended in the course of argument "that there is no dispute regarding the Plastic Satranj manufactured on their raw materials, purchased, converted, and sold under the brand name to the third party on principle to principle basis and the price declared in respect of a such Satranj have been declared confirmed by the Commissioner (Appeals)". The Commissioner (Appeals) finding "on the assessable value in respect of Satranj manufactured on job work basis for M/s. Supreme Industries" is not correct. According to him "assessable value has to be worked out on the basis of landed cost of the raw materials supplied by M/s. Supreme Industries Ltd. in the factory premises of the appellant plus the job charges of the appellant including the manufactured cost of the appellant and also its profit".

The appellant gets job charges from M/s. Supreme Industries Ltd. which include actual manufacturing cost and margin of profit of the appellant. Commissioner has held that "job charges should be divided into manufacturing expenses and margin of profit of the appellant included in job charges should be made applicable to the entire cost of raw materials plus the expenses and thereafter only the assessable value; should be worked out, and the Central Excise duty should be paid on the said assessable values". Various Tribunal decisions have held that "where the goods are manufactured on job work basis, the assessable value would be equivalent to the landed cost of raw materials in the factory premises of job worker plus job charges which include manufacturing expenses of job workers and the margin of profit of job workers". According to the Commissioner "it is to be applied independently to the landed cost of raw materials plus manufacturing expenses of the job worker". Which means that the assessable value will have to be increased to the extent of margin of profit of the job workers on the landed cost of raw materials plus the manufacturing expenses of job workers. This is however not supported by recent Judgment and consequently impugned order is required to be modified so that assessable value of Plastic Sa-tranj in cases when the raw material are supplied by M/s. Supreme Industries Ltd. to the appellant are

approved on the basis of landed cost of raw material plus job charges of the appellants, which includes the manufacturing expenses and the margin of profit of job workers. 1997 (23) RLT 904 (T) Saheli Synthetics (P) Ltd. v. Collector of Central Excise, Vadodara and 1998 (27) RLT 217 (T) Gautam Processors (I) Ltd. v. CCE, Jaipur are relied on.

4. The Ld. JDR Shri K.M. Patwari for Department has urged in the arguments that Ujagar Prints decision by Supreme Court does not apply to the case on hand, as conditions laid down are not satisfied. The quality of goods manufactured by appellant for itself and M/s. Supreme Industries as job worker is the same. There is no distinction of the above goods with separate brand name of appellant or M/s. Supreme Industries which are printed by the Plastic bags separately in which they are sold. The assessment of value is proper and correct on the basis of information supplied by M/s. Supreme Industries giving admissible deduction on transport charges and Central Excise duty paid, which sells the branded goods as Supreme Industries goods to wholesale dealer with their price. The sale price is different from the price declared in price lists by the appellant. Delivery is at Bombay only.

It is the normal price. The Approach of Asst. Collector in fixing the assessable value 1st and II quantity goods by giving 10% deduction is correct. Major portion of goods manufactured from the raw material of appellant is sold to Supreme Industries. So the same value can be fixed to them also, as fixed for Supreme Industries product, as there is no difference. M/s. Supreme Industries does not make any further process on the goods manufactured by appellant as job worker after delivery of finished product by appellant to M/s. Supreme Industries .

5. It is further contended by Ld. JDR that as per the impugned order the decision of Supreme Court in Ujagar Prints case is applicable to this case, from different angle, and assessable value has to be determined, as held by Commissioner (Appeals) i.e. "Value should include cost of raw material +value of job work + manufacturing expenses and Profit, and not of cost of raw material + job charges as contended by appellant value of goods not confined to cost of raw material + job work, but will also constitute manufacturing expenses and manufacturing profit

i.e. expenses and profit that manufacturer would get, if he chooses to sell the goods and manufacture the goods on his own, as per *Asia Tobacco Ltd. v. Assistant Collector of Central Excise* 1991 (53) E.L.T. 297 (Mad.) wherein petitioners were manufacturing cigarettes on behalf of M/s. ITC in which case, value would be one of which petitioners were deemed to be selling the goods manufactured by it, which is a question of fact to be determined by assessing officer. As per *Ujagar Prints* case Supreme Court decision while determining assessable value, conversion charges has to be included in the cost of raw material + manufacturing profit and expenses and nothing more. In no case trader's profit should be included. Manufacturing profit should not be ignored, which has a broader concept as compared to profit made on job charges. What is included in job charges is the profit made on the value of job work i.e. an investment made on the cost of job work, which does not amount to manufacturing profit. If the job worker would have invested his own money for the purchase of raw material and its incidental charges he would have determined his profit in proportion to the entire investment made by him, rather than confining himself to the cost of job work only. When comparable price of the goods is not available, margin of profit reflected in the appellants' balance sheet or as worked out on percentage basis from the job charges should be applied to the entire cost of raw material plus incidental and overhead charges + value of the job work. Value of raw material includes transportation charges for bringing raw material to manufacturing premises + Octroi + Sales Tax, if any paid on such raw material. Percentage of job charges profit can be worked and determined which comes to 25% which can be applied on the entire cost of raw material + value of job work including incidental charges, if not included, as per Tribunal decision in 1990 (49) E.L.T.310 in the case of *Sagar Corporation v. CCE*. which says that "For assessment under Section 4 in respect of goods produced on job work value shall not be processing charges alone, but the intrinsic value of the processed fabrics which is a price at which the fabrics are sold for the first time in the wholesale market". To arrive at intrinsic value, the profit will have to be calculated with reference to the entire investment and not its part. Direction to Assistant Collector to determine price as above by Commissioner (Appeals) is appropriate.

Selling price of Supreme Industries include their profit which is not permissible under Ujagar Prints case. There is no finding beyond show cause notice. The Commissioner (Appeals) has upheld the case of appellants regarding the fixing assessable on Satranj sold by appellant at its rate as raw material used on its own, which shows correct and proper approach.

6. Point to be considered is whether there are sufficient and satisfactory grounds to allow the appeal? We answer it in the affirmative.

7. Perused the show cause notice, reply, pricelists filed, correspondence other documents produced, orders of lower authorities, written submission of appellant, appeal memorandum. Also perused the rulings relied by appellant in the synopsis and Ujagar Prints orders of Supreme Court. Argumerits of both sides are taken note of. The limited question involved in the "Determination of Assessable on the goods manufactured by a job worker, on the raw materials supplied by actual customer, and the correctness of approval of price lists filed by appellant by the department. From the contention of both sides, it is seen that clarificatory judgment in Ujagar Prints case is the basis for it, which is the foundation of the development of case laws, in the rulings of Tribunal. So it is necessary to first counsel the said rulings before applying to the case on hand to decide the correctness or otherwise of impugned order.Ujagar Prints Etc. Etc.

v. Union of India and Ors. dated 27-1-89 decided on the Miscellaneous application in Writ Petition No. 12133 of 1988 - Valuation-Profit-Post Manufacturing Profits-Traders Profit being post-manufacturing profit not includible-Section 4 of Central Excise Act (para 2) valuation of goods produced on job work basis-processing of fabrics-Assessable value to include cost of material, processing charges, and profit of processor, but Traders profit (Customers profit who got the goods processed) not includable being, post-manufacturer profit. If trader gives declaration to the processor about the price at which he would be selling the processed goods in the market such declared price would be assessable value provided it included only the price at which processed goods would leave the processors factory + processors profit, Section 4 of the Central Excise Act. Item 19 of Central Excise Tariff Chapter 50 to 56 of Central Excise Tariff-Rule 174 of

Central Excise Rules (Para 2) valuation-Factory gate-goods produced by processors on job work basis-Processor's factory gate to be treated as deemed factory gate as if processed fabrics were sold at processor's factory gate Section 4 of Central Excise Act, (para 1). As per earlier Judgment dated 4-11-88 in the same case in 1988 (38) E.L.T. 535 (S.C). It was held that valuation of goods produced by job worker/processors out of material supplied by the customer not to be confined to processing charges, but also to include cost of material and profit of customer-customer's profit not treatable as post manufacturing profit Section 4 of Central Excise Act and Central Excise (Valuation) Rules 195 (para 29 and 30). This was clarified in the above decision on 27-1-1989.

1998 (27) RLT 47 (CEGAT) in the case of Gautam Processors (I) Ltd .KPL Factory v. Collector of Central Excise, Jaipur, relying on 1997 (23) RLT 904 in the case of Saheli Synthetics (P) Ltd. and Ors. v. Collector of Central Excise, Vadodara dated 31-7-97 and Ujagar Prints 1989 (39) E.L.T. 493 (S.C.) holds on 15-5-98 that Assessable value under Section 4 of Central Excise Act in the case of job worker dealing with processed fabrics to be determined on the basis of cost of grey fabrics + processing charges - demand based on higher price charged for processed fabrics by grey fabrics supplier set aside, allowing the appeal (Para 2). As per Saheli Synthetics (P) Ltd. & Ors. v. Collector of Central, Excise, Vadodara, in 1997 (23) RLT 904 assessable value has to be determined in the basis of cost of grey fabrics + job charges in view of clarificatory Supreme Court order in Ujagar Prints - 1989 (39) E.L.T. 493 (S.C).

1999 (106) E.L.T. 402 (T) (WZB) in the case of fyoti Structures Ltd. v.CCE, Aurangabad - Valuation (Central Excise) Job work - Profit element in Job work charges-Value declared by job worker includes profit element unless department puts a case that any amount was collected from buyer as profit over and above job charges. Section 4 of the Central Excise Act, (para 2). Now, the present appeal is considered below in the light of the general principles laid down in the above rulings.

9. From the above paras, it is seen that the discussion and findings in the Order-in-Original and impugned order as to the evaluation of assessable value of goods

manufactured on job work basis does not find support from the rulings of Ujagar Prints clarificatory judgment.

Valuation of goods produced on job work basis-processing of fabrics-Assessable value to include cost of material, processing charges and profit of processor, but traders profit customers profit who got the goods processed) not includable being post manufacture profit. If the trader gives declaration to the processor about the price at which he would be selling the processed goods in the market such declared price will be the assessable value provided it included only the price at which the processed goods would leave the processors factory + processors profit-Processors factory gate to be treated as deemed factory gate, as if processed fabrics were sold at processor's factory gate for the purpose of valuation under Section 4 of Central Excise Act, and later ruling of the Tribunal referred above. As clearly explained by the Ld. Consultant in his arguments, the effect of the approach of the Commissioner results in the increase of assessable value to the extent of the margin of profit of the job workers on the landed cost of raw materials + the manufacturing expenses of the job workers i.e., contrary to the decisions of the Tribunal that "where the goods are manufactured on job charges basis, the assessable value would be equivalent to the landed cost of raw materials in the factory premises of job worker + job charges of job workers, which include the manufacturing expenses of job workers and margin of profit of job Workers". The Commissioner (Appeals) view is that it is to be applied independently to the landed cost of raw materials + manufacturing expenses of job workers, which means that assessable value will have to be increased and observed above. The assessable value are worked out on the basis of the landed cost of raw materials supplied by M/s. Supreme Industries Ltd. in factory premises of the appellant + job charges of appellants which includes appellant and the profit of the appellant. It is in line with the manufacturing cost by the clarificatory Judgment of Supreme Court in Ujagar Prints case as observed above. The finding of the Commissioner that "Job charges should be divided into manufacturing expenses and margin of profit of appellant, which is included in job charges should be made applicable to the entire cost of raw materials + expenses and thereafter only assessable value should be worked out and Central Excise duty should be paid on the said assessable value is not proper and correct. The recent decision of

Tribunal cited above supports the stand of the appellant. So, upholding the case of the appellant, point raised is answered in the affirmative. Hence we pass the following order.

For the reasons discussed above, the appeal is allowed and impugned order is modified as follows. "The assessable value of Sairanj manufactured on job work basis by the appellant on the raw materials supplied by M/s. Supreme Industries Ltd. should be approved on the basis of landed cost of raw materials + job charges of the appellant including manufacturing expenses and margin of profit of the appellant as job worker."

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