

Mercury Rubber Mills Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-20-2000

Reported in : (2000)(120)ELT413TriDel

Appellant : Mercury Rubber Mills

Respondent : Commissioner of Central Excise

Judgement :

1. The appeal is directed against denial of refund claim for Rs. 2,41,757. Learned Representative of the appellant took us through the documents relied upon by them for claiming refund and submitted that the refund claim is on account of (1) freight and other cost of transportation; (2) liquidated damages and (3) interest on receivables.

He submitted that the contract with the Electricity Board, the buyer of the goods, is on the basis of delivery at their Thermal Power Stations.

Therefore, from the payment received by the appellant, they incurred expenses towards freight, handling and other cost. Appellant submits that these expenses are eligible for deduction from the price received by them. With regard to liquidation damages it has been submitted that liquidated damages are deducted from the price due in view of the delay in making delivery. Appellant submits that these liquidated damages are also eligible for deduction while fixing assessable value as the amount received as price for the goods is worked out after disallowing liquidated damages by the buyer. With regard to interest on receivables it has

been submitted that according to the contract, payment is to be made 30 days after the date of receipt at the thermal power station.

Appellant's representative explained that some time passes before the clearance of the goods from the factory and their delivery at the thermal power station. So the payment takes place only after 30 days from the date of receipt. Appellant's submission is that the price received must be worked backwards to derive the ex-factory price on the date of removal and duty charged only on such price.

2. Learned Departmental Representative submits that with regard to interest on receivables, the Larger Bench of this Tribunal in the case of Gomti Carbon (Final Order No. 348-355/2000-A, dated 6-6-2000) [2000 (119) E.L.T. 565 (Tribunal - LB)]has held that deduction on account of interest on receivables would be permissible only in cases of credit sale and that too for the period of credit. Learned Departmental Representative submitted that it is clear from the computation that the deductions claimed in the present case are for the total period of delay in effecting payment by the Electricity Board and not for the period of credit only. He, therefore, submitted that deduction as claimed cannot be permitted. He also raised a point that the refund may not be permissible on account of unjust enrichment. In his reply the Representative of the appellant submitted that the question of unjust enrichment does not arise in the present case. He submitted detailed calculation, which is available at page 24 of the appeal paper book. He also took us to the calculation sheet of the Accounts Officer (S.B.VI), which is available at page 21. He explained that the Electricity Board does not make reimbursement of Central Excise duty on the basis of the amount actually paid as duty by the appellant but itself works out the duty after making deduction for freight etc. Thus, excess duty paid on this amount has not been passed on. He also stated that with regard to deduction claimed on interest on receivables, the question of unjust enrichment cannot arise at all as the deduction is claimed to make the price received equivalent to the price at the time of removal. It is also submitted that they received no payment from the Electricity Board to compensate them for the delay in making payment.

3. We have perused the records and have considered the submissions made by both the sides. It is clear that the price received by the appellant is based on delivery at the thermal power plant. The price includes freight, handling etc. These elements are not includible in the assessable value at all, as assessable value is to be determined based on the price at the time and place of removal. Therefore, deductions claimed by the appellant on this score are legally correct and the refund claim is to be allowed. In regard to interest on receivables it has been decided by Larger Bench of this Tribunal in its Final Order No. 348-355/2000-A, dated 6-6-2000 [2000 (119) E.L.T. 565 (Tribunal - LB)]in the case of Gomti Carbon that Interest on Receivables for the credit period is permissible. According to the appellant's sale contract, payment is to be made to them within thirty days from the date of receipt of the goods at the site. Therefore appellant's claim for deduction of Interest on Receivable for the period between the clearance of the goods from the factory and thirty days from the date of receipt at the site is eligible for deduction according to the order in the Gomti Carbon case. Appellant's refund claim is required to be reworked to limit the same to this period. With regard to the claim for deduction of liquidated damages, we observe that this Tribunal has already held in the case of Bhartia Cutler Hammer Ltd. v. CCE, New Delhi 1998 (99) E.L.T. 436 (Tribunal) that such deduction is not permissible under Section 4 of the Central Excise Act, 1944.

4. From the position as indicated above, we are of opinion that the appellant's claim for deduction towards freight, handling charges and other elements as well as claim for deduction on account of interest on receivables are to be permitted and his claim for deduction on account of liquidated damages is not an eligible claim. We however observe that the matter is required to be remanded to the original authority for working out the actual amount of refund. Accordingly, the case is remanded for working out the refund amount and making payment. Since the clearances and payment of duty took place from 1997 onwards and as the claim is long pending, it is directed that the remand proceedings should be completed within the shortest period possible and, in any case, within three months from the date of receipt of this order. On the facts of the case, the question of unjust enrichment does not arise. Therefore, the remand proceedings shall be conducted confining only to quantification of the amount of refund.

