

indus Engineering Co. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-03-2000

Reported in : (2000)(122)ELT179Tri(Mum.)bai

Appellant : indus Engineering Co.

Respondent : Commissioner of Central Excise

Judgement :

1. When the stay application was listed for hearing on 9-3-2000, the Tribunal found that the appeal itself could be disposed of and listed it for decision today. The appeal is taken up for hearing after waiving deposit.

2 The appellant, at the relevant time, was manufacturer of parts of machinery of iron and steel. By notice issued in June, 1996, the department proposed to demand duty on the goods cleared by the appellant for the reason that the appellant had taken Modvat credit of duty paid on the inputs used by it in the manufacture. The notice did not specify the nature, description or value of the goods in respect of which there was short levy or the period during which it cleared the goods. Although the annexure to the notice indicate Modvat credit to the extent of Rs. 1,10,54,171, have been availed of between December, 1995 and May, 1996 and that duty is payable at 15% works out to Rs. 16.58 lacs. The Assistant Commissioner confirmed the proposal in the notice by reference to Section 4(4)(d)(ii). Appeal against this order was dismissed by the Commissioner (Appeals) on the ground that the appellant did not deposit 50% of the duty as ordered by him in the stay order. Hence this appeal before us.

3 We are not able to find any basis whatsoever in the show cause notice for demanding the duty. Why the fact of Modvat credit being taken should result in the enhancement of the assessable value of the goods is not explained either in the notice or in the Assistant Commissioner's order. The Assistant Commissioner's view that the "normal price" meaning the price at which the goods are ordinarily sold in the course of wholesale trade will include the duty payable on such goods, may or may not be right depending on circumstances in each case.

There is however nothing in the notice or in the order to say that Modvat credit was deducted in arriving at the assessable value. The entire question in fact is irrelevant because except in the cases where the value of the goods have been confirmed with reference to the cost of manufacture by invoking rule 6(b)(2) of the Valuation Rules. In all other cases, where the price under Section 4(1)(a) of the Act is the extent the Modvat credit value or not is irrelevant. Once the price at which the goods are sold is known, and there is no reason to believe that this price is not the real price, it is that price on which duty is to be levied. It is not open to the department to define the parameters according to which that price should be regulated. There was absolutely no basis therefore for the order of the Assistant Commissioner.

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