

Ujagar Prints and Processors P. Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-14-2000

Reported in : (2000)(122)ELT496Tri(Mum.)bai

Appellant : Ujagar Prints and Processors P.

Respondent : Commr. of C. Ex.

Judgement :

1. When this application was argued by Shri T. Viswanathan for the assessee and Shri K.M. Patwari for the revenue, it appeared that at this stage itself the main appeal could be taken up for disposal. Both parties agreeing this was done, by granting waiver of the duty confirmed amounting to Rs. 5,44,076/-.

2 Vide their clarificatory order reproduced in 1988 (38) E.L.T. 535 in the case of Ujagar Prints etc. etc. v. UOI and Ors. the Supreme Court held "the assessable value of the processed fabrics is declared to be the value of the grey cloth in the hands of the processor plus the value of the job worker plus manufacturing profit and manufacturing expenses whatever these may be...".

3. Three show cause notices were issued to the appellants covering the period May, 1992 to February, 1993. These show cause notices were identically worded. The allegation was that in the various price-lists filed by them the element of manufacturing expenses and manufacturing profit were not added to the assessable value. The aforesaid judgment was cited. The differential duty was quantified at Rs. 5,44,076/-.

Significantly the show cause notice did not spell out the material for the allegation. The assessees made their submissions. The Assistant Collector passed a single order in disposal of these three show cause notices. The Assistant Collector interpreted the Supreme Court's order in the following words: 'Ujagar Prints v. Union of India' have laid down that the elements which can be added to determine the assessable value of the processed fabrics are the value of grey fabrics, value of job work and manufacturing expenses and manufacturer's profit. If the Supreme Court intended to equate job workers' profit with manufacturing profit, the Court would not mention manufacturing profit as a distinct element in the assessable value. By including manufacturing expenses and manufacturing profit as two distinct elements in the assessable value over and above the value of job work and value of the grey fabrics, the Court must have meant that the value of grey fabrics and the job work done, will not yet include manufacturing expenses and manufacturing profit. Under the circumstances, I find that manufacturing expenses and manufacturing profit are includible in the assessable value. As there is no accurate method to determine the manufacturing expenses and manufacturing profit for the purpose of computing the assessable value, I find that the addition of 10% to the value of the fabrics will be a reasonable addition to cover the manufacturing expenses and the manufacturing profit." On these observations he confirmed the demands. It is significant to note that because he could not determine the manufacturing expenses allegedly not added in computing the assessable value, he contended himself by adding another quantum of 10% to the assessable value.

Equally significant is the fact that in the price lists relating to this period the assessees have a specific claim that the job charges did include manufacturing expenses and profits. In addition to that the assessees had on their own added notional profit, albeit under protest.

It would thus appear that the interpretation later made by the Assistant Collector was anticipated and was adopted by the assessees at the time of filing the price list.

4. At a later date several benches of the Tribunal went into the issue of the necessity to add a separate margin of profit in the face of the job worker's claim that the total sum of job work charges would include profit also. In these judgments the Tribunal held that the job charges would include the manufacturing costs and the profit of the job workers. Therefore separate levy of duty adding manufacturing profits was not warranted. Two of the judgments are as cited below: (CCE v. Crown Tobacco Co.).

5. Against the order of the Assistant Collector the assessee filed an appeal. The Commissioner (Appeals) questioned the quantum of the profit as "reasonable", set aside the order and remanded the proceedings back to the Assistant Collector for the sole purpose of determination of manufacturing profit. The assessee was directed to furnish the relevant information. The Assistant Collector was charged with the responsibility of examining the documents so produced.

6. In the second round the Assistant Collector passed his order dated 20.07.1994. He did not go into any other data presumably supplied by the assessee on the observation that the issue stood remanded for the limited purpose of determining the percentage of profit. After scrutiny of the balance sheet etc. he determined the profit margin year-wise and confirmed the surviving demand. Shri Viswanathan submits that in spite of the variations which took place in the percentage of profit the demands confirmed were raised in the show cause notices.

7. The assessee once again filed an appeal. In the impugned order the Commissioner (Appeals) amplified the scope of the phrase "manufacturing expenses". Relevant paragraphs in his order read as below: "8. The points arising for determination here are as to what are the manufacturing expenses and manufacturing profits which are includible in the assessable values, besides values of the grey cloth and value of the job work done, in respect of fabrics processed on job work basis.

9.1 Undisputedly, assessable value of fabrics, processed by an independent processor or job work basis, would be sum total of 9.4 The four elements essentially to be considered for determining the assessable value i.e. the deemed price at the processor's factory gate are:- (i) Value of grey fabrics at the hands of

the processors which would include packing, transportation, octroi duty, if any loading and unloading and all other expenses in their respect, till they reach processor's factory; (ii) Value of the job work done i.e. price chargeable, charged for the job work which would be the job charges/processing charges, charged by the processors in respect of processing of the fabrics; (iii) manufacturing expenses, whatever they may be, which would include interest-expenditure incurred by supplier for maintaining inventory of fabrics right from procurement till they leave processor's factory after processing, expenditure incurred by supplier on staff, agents, etc. for maintaining records and for activities in relation to fabrics right till they leave processor's factory, the incremental cost element on account of wastage, shrinkage of fabrics in course of processing and each and every of expenses incurred by fabrics supplier in relation to the fabrics till they leave the processor's factory; (iv) And manufacturing profit i.e. profit that would have been normally earned/accrued on the processed fabrics, if they were sold at the processor's factory-gate; Thus beside value of the grey fabrics, at the hands of job worker, and job-charges the said two elements viz. manufacturing expenses whatever those may be till processed fabrics leave the processors factory and manufacturing profits accruable in event of sale of goods at processor's factory, are includible in the assessable values." In paragraph 12 of his order he justified the action of the Assistant Collector. He upheld the lower order in toto. Hence the present appeal.

8. As we have observed above, the show cause notice did not spell out the grounds which have now been supplied by the learned Commissioner in his order-in-appeal in the second round. It is true that the Commissioner thought of the method and manner of calculation of the value of the grey fabrics in the hands of the processor does have strength. The value of the grey fabrics would appreciate by way of interest on inventories, transportation, insurance etc. as they crossover from the traders to the job workers. Prima facie such charges would be addable to the value of the grey fabrics in the hands of the processor. It would however be extremely difficult to determine such charges and where, as in the present case, an assessee states that such charges like shrinkage stand included in his computation, it would be extremely difficult for the department to disprove the statement. But just because the charges cannot be computed the department

cannot have the alternative of fixing another round of notional profit at a particular figure in the face of the aforesaid citations of the Tribunal that this cannot be done.

9. We find that the manner in which the proceedings have evolved thus violates the basic principles of natural justice and that is that an assessee must know what the exact charges against him are. Belatedly the thoughts of the department which may have been there behind the issue of the show cause notice have been voiced by the Commissioner in his order. The assessee at this stage therefore would have had no chance to defend their case. They must be given that chance. We have therefore no alternative but to set aside the impugned order and once again remand the matter to the jurisdictional Assistant Collector. He must go on record as to what elements of cost are lacking in the computation of assessable value, how they could be arrived at and at what quantum. He would also have to keep in mind the in-cludibility of another set of profits in the face of the declarations given by the assessee in the price lists that the profits stand included in the job charges and also in the face of the additional notional profit declared by them in spite of their claim to the contrary. The assessees shall also be given an opportunity by the Assistant Collector to state their case before him. He shall not reject any submissions made by the assessees on the grounds of the scope of the remand order.

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