

Commissioner of C. Ex. Vs. Dcl Polyester Ltd.

Commissioner of C. Ex. Vs. Dcl Polyester Ltd.

SooperKanoon Citation : sooperkanoon.com/20657

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-31-2001

Reported in : (2001)(131)ELT290Tri(Mum.)bai

Appellant : Commissioner of C. Ex.

Respondent : Dcl Polyester Ltd.

Advocate for Def. : Shri. Vipin Jain

Judgement :

1. These four appeals have been filed against the decisions of the Commissioner (Appeals), Bhopal, made in Orders-in-Appeal made on 18-5-1998. He has granted relief to the respondent assesseees in respect of trade discount. The Commissioner (Appeals) has also held that as against depot price the factory gate price which are available in these cases have to be accepted as the price which is relevant for purpose of valuation under the Central Excise Act.

2. The assessee respondents manufactured polyester filament yarn. They filed various price lists claiming abatement in respect of freight, octroi, insurance, sales tax, trade discount etc. They sold goods both at factory gate as well as at their depot. A show cause notice dated 27-5-1997 was issued whereunder the department sought to claim short duty of Rs. 1,65,39,278/- and Rs. 1,79,409/- on polyester filament yarn cleared to different depots by them during July, 1995 to September, 1995. The points for our decision was as to the acceptance of the factory gate pass as against depot price. The adjudicating authority namely the

Assistant Commissioner by various orders disagreed with the claim by the assessee respondents against which four appeals were filed by the assessee. By the impugned order appellate authority after referring to the judgment of the Supreme Court in the case of Bombay Tyre International -1983 (14) E.L.T. 1896 and the judgment of Tribunal in the case of Lucas India Services - 1996 (83) E.L.T. 441 decided the case in favour of the assessee. In fact the appellate authority specifically referred to the judgment of the Supreme Court in the case of Indian Oxygen -1988 (36) E.L.T. 723. Against the said orders instant four appeals have been filed by the Department.

3. Learned DR, Shri Choubey contends that the approach of the appellate authority is wrong inasmuch as the factory gate price not been doubted reliance on the ruling in the Indian Oxygen case (supra) in the facts and circumstances of the case is wrong. He states taking the clue from ground No. 1 of the appeal that the issue involved in this matter is not a varied discount on clearances from factory gate and depot but the fact that the party has not at all passed on discount to the customers in certain cases and hence the said amount has been treated as extra consideration and thus chargeable to duty. This position has been countered by Shri Vipin Jain learned Chartered Accountant appearing for the respondent assessee that, that is not the case of the department as revealed in the show cause notice. Ground No. 1 taken in the appeal is that the case has been made against the assesseees for the first time in the grounds of appeal before the Tribunal. During the course of the argument reference was made to the judgment of the Supreme Court in the case of G.O.I, v. Madras Rubber Factory Ltd., 1995 (77) E.L.T. 433.

4. We have considered the rival submissions. Where there are the existence of factory gate prices and depot prices it has been held by the Supreme Court in the case of Indian Oxygen (supra) that factory gate price will only be relevant irrespective of the fact about the percentage of sales made in depot and factory gate. As long as there is the existence of factory gate price that alone will be taken into consideration for purpose of levy of duty, this position is not denied.

However we have to see the facts in this case. In show cause notice in para two thereof it has been stated as follows : "On further verification and inquiry conducted with M/s. Tata Telecom Ltd. and M/s. Trans India Network Systems Ltd. they were unable to produce any documents/challan in respect of goods mentioned in Annexure 'A' & 'B' to detention Memo No. 1/97-98, dated 20-3-1998 placed under detention as per panchnama dated 20-3-1998.

As such the said detained goods were placed under seizure under panchnama dated 24-3-1998 drawn in the presence of two panchas and Shri D.C. Joshi, authorised person of M/s. Tata Telecom Ltd. & M/s.

Trans India Network Systems Ltd. who stated before panchas that goods as per Annexure 'A' & 'B' to detention Memo dated 1/97-98 dated 20-3-1998 are inputs as well as semifinished goods produced out of input on which credit was availed by M/s Tata Telecom Ltd.; that M/s. Tata Telecom Ltd. had not prepared any Central Excise documents i.e. 57F Challans, Central Excise invoices or any other documents for removal of the said goods, that M/s. Tata Telecom Ltd. had neither any permission under Rule 57F of Central Excise Rules, 1944 nor they have given any intimation regarding movement of this inputs/semifinished goods to Central Excise Department.

Inputs/semifinished goods totally valued at Rs. 1,14,92,485/- as mentioned in the Annexure 'A' & 'B' to detention Memo dated 20-3-1998 involving Central Excise duty of Rs. 19,01,134/- were placed under seizure as the said goods belonging to M/s. Tata Telecom Ltd. were stored in the Premises of M/s. Trans India Network Systems Ltd. in contravention of Rule 57F of Central Excise Rules, 1944 under reasonable belief the same inputs/semifinished goods were liable to confiscation. The goods so seized were handed over for safe custody to Shri D.C. Joshi, authorised person from M/s. Tata Telecom Ltd. under supratnama dated 24-3-1998." It has been clarified during the course of arguments that provisional assessment has since been finalised by the order of the Assistant Commissioner made on 1-5-1997, therefore the show cause notice issued is not being doubted by the assessee representative Shri Vipin Jain but what he stresses is that the actual passing on the trade discount is not the ground made in the show cause

notice. This point after verification of the show cause notice we hold in favour of the assessee respondent. As far as the point regarding factory sales is concerned reference was made to Para 24 of the Madras Rubber Factory case (supra). In the said judgment at Para 24 it has been specifically held as follows: "In this behalf it is relevant to note that Sub-section (2) of Section 4 which envisages a situation where the goods are not sold at the place of removal but sold at a place other than the place of removal provides for deduction of the cost of transportation from their place of delivery." The above passage in our view cannot be applicable to the facts in the instant case because here it is an admitted position that the sales have been made not only at the factory gate but also at the depot.

Hence in our view the judgment of the Supreme Court in the case of Madras Rubber Factory may not be applicable. The grounds made by the department as contained in Para 1 thereof in our view goes beyond the show cause notice. Hence the appeals are devoid of merits mainly relying on the Supreme Court judgment in the case of Indian Oxygen - 1988 (36) E.L.T. 723.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com