Commissioner of Central Excise, Vs. National Tubes

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-30-2001

Appellant : Commissioner of Central Excise,

Respondent : National Tubes

Judgement :

1. National Tubes, the respondent to this appeal is a manufacturer on job work of tubes and pipes of copper and copper alloys. The question for consideration in this appeal is whether, in determining the cost of manufacture of these tubes and pipes for the purposes of assessment, it was entitled to exclude the modvat credit of the duty paid by their manufacturer on the ingots, which were supplied to it for manufacture of these goods. Applying the ratio of the decision of the Tribunal in Dai lchi Karkaria vs. CCE 1996 (81) ELT 676, the Commissioner (Appeals) upheld the contention of the manufacturer that this element need not be included.

2. The department's appeal against this order contends that the Tribunal's decision was concerned with the valuation of captively consumed goods and its ratio will therefore not apply to job work. This is not correct. Paragraph 20 of the Tribunal's order says, "We therefore hold that duty paid on inputs in regard to which Modvat credit was availed of by a manufacturer is not includable in the assessable value of the final product under Section 4(1)(b) of the Act and Rule 6(b)(ii) of the Rules." The valuation of the goods by a job worker is clearly under Section 4(1)(b). Disposing of the appeal filed against this order, the Supreme Court has said that, in determining the cost of a product "under Section 4(1) (b) of the Act read with

Rule 6 of the Valuation Rules, the excise duty paid on raw materials also covered by the modvat scheme is not to be included." From the use of these words, it might appear that the Court's conclusion would not apply to a case of valuation under Section 4(1)(b) of the Act where Rule 6 is not involved. However, the ratio of the court's judgment will apply, in our opinion, in that situation too. The Court has said that the cost should be reckoned as a man of commerce would reckon it. To such a man the cost of the raw material would be reduced by the extent of duty paid on it, which is available to him as modvat credit. In calculating the cost of the material, he wold therefore exclude the modvat credit. In determining the value of the goods manufactured on job work, we are dealing with a situation in which we deem the job worker to be the manufacture, and proceed on the assumption that clearance by him is from a deemed factory gate market. This is what the Supreme Court has said in Ujagar Prints vs. UOI 1988 (38) ELT 535. The principles applied by the Court in Dai Ichi Karkaria would thus apply to cases of job work also. We see no reason to interfere.