Ashima Denims Vs. Commissioner of Customs and C. Ex.,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-04-2002

Reported in : (2002)(142)ELT624Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Ashima Denims

Respondent : Commissioner of Customs and C. Ex.,

Judgement :

1. The above application for modification of the Order No.C-I/3363-67/WZB/2001, dated 29-10-2001, by which M/s. Ashima Denims was directed to deposit a sum of Rs. 50 lakhs out of the total duty demand of Rs. 1.27 crores and penalty of equal amount within two months, has been filed for the following reasons.

(i) That duty of Rs. 77,52,053/- which has been confirmed on dyed yarn by inclusion of duty levied on grey yarn, and warping and sizing thereof is prima facie not sustainable since duty, if at all payable, is only payable on the dyeing component and this works out to Rs. 6,50,309/- only. The contention of the applicant in this regard is that, the plea that only the dyeing component attracts duty, which was raised in the appeal, has not been considered while passing the order directing pre-deposit.

(ii) That adoption of cost plus profit basis for valuing the yarn captively consumed resulting in duty demand of Rs. 49,65,635/-is contrary to the Tribunal's Final Order

No. 16/2001-A, dated 10-1-2001 in the case of CCE v. Raymond Ltd. - 2001 (128) E.L.T. 94 (T) in which the Tribunal has upheld the Commissioner's order directing assessment of goods based on price of comparable goods after making necessary adjustment as contemplated under Rule 6(b)(i) of the Valuation Rules and rejected the department's contention that variation in material characteristics is ground to resort to assessment based on cost of production.

2. It is the further submission of the applicant that even with regard to the issue on percentage of profit while calculating the value of yarn on the basis of cost plus profit, the burden lies upon the department to show that the profit has been calculated with regard to the product in question in the light of the ratio of the Tribunal's decision in the case of Raymond Ltd. v. CCE 2001 (129) E.L.T. 327, and this burden has not been discharged by the adjudicating authority in the present case.

3. The prayer for modification is opposed by learned DR on the ground that there is no material on record to show that the plea regarding duty liability only on the dyeing component of the yarn was raised during the hearing of the stay application and further on the ground that the applicant is seeking to re-argue the stay application in the guise of a modification application and this is not permissible in law.

4. We have carefully considered the rival submissions and we see prima facie substance in the contention that duty is to be levied only on the dyeing component (which has been done in the case of other units carrying on similar activities). We also see force in the submission regarding adoption of Rule 6(b)(i) of the Central Excise (Valuation) Rules for comparable goods captively consumed in the light of the Tribunal's decision in the case of CCE v. Raymond Ltd. (supra). The assessee submits that if this method of assessment is adopted and the profit of the particular product is taken into account, duty liability will be approximately Rs. 6.5 lakhs.

5. Having regard to the above we modify the stay order by directing pre-deposit of Rs. 15 lakhs within a period of four weeks from today and on such deposit the pre-deposit of balance amount shall stand waived and recovery thereof stayed pending the appeal. Failure to comply with this direction shall result in vacation of

stay and dismissal of appeal without further notice.