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Commissioner of Central Excise, Vs. Bhilwara Processors Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-2002

Reported in : (2002)(81)ECC582

Judge : B T K.K., K Kumar

Appellant : Commissioner of Central Excise,

Respondent : Bhilwara Processors Ltd.

Judgement :

1. These are the Revenue appeals against the orders dated 31-8-2001 and 1-6-2001 passed by the Commissioner of Central Excise (Appeals), Jaipur.

2. The brief facts in all these cases are that the respondents are processing woollen fabrics falling under Chapter 51 and man-made fabrics falling under Chapter 55. They are processing the fabrics received from various parties on job work basis. The assessable value of the processed fabrics is determined on the basis of cost construction method taking into account the landed cost of the raw material of (grey fabrics) and the processing charges. For this purpose the processors (respondents) filed a declaration in which the cost of raw material is taken as per the declarations filed by the principal suppliers. The respondents paid the duty on the processed fabrics as per the law laid down by the Hon'ble Supreme Court in the case of Ujagar Prints etc. v. Union of India and Ors. - 1989 (39) E.L.T. 493 (S.C.). The assessable value declared by the respondents in each case was taken up for scrutiny by the departmental authorities and it was found

that the principals who had supplied the grey fabrics manufactured by them to the respondents had priced them at much lower value. Accordingly, it was averred that assessable value of the finished fabrics manufactured by the respondents in each case was liable to be increased. Consequently, the show cause notices were issued to the respondents by the Central Excise authorities calling upon them to show cause why the differential duties of various amounts should not be recovered from them. The respondents pleaded before the adjudicating authorities that they were processing the grey fabrics supplied to them by their principals under the cover of proper documents; that the cost of the grey fabrics besides the processing charges were also indicated in the declaration; that on the basis of the details given by their principals, they were paying central excise duty at the time of clearance after processing the fabrics; that they had no means to find out as to whether the grey fabrics under consideration were assessed properly or not; that the said grey fabrics were sent to them for further processing and it would be unkind to hold them responsible for the under valuation if any by the principals and that it was not mandatory to find out the mode of assessment arrived at by their principals for the main fabrics manufactured by them. On taking into consideration the submissions made by the respondents, the adjudicating authorities confirmed the differential duty demands on them apart from imposing the various amounts of penalties. The respondents filed appeals and the Commissioner (Appeals), Jaipur vide his orders as referred to above allowed their appeals by relying on the decision of the Tribunal in Sangam Processors (Bhilwara) Ltd. v.C.C.E., Jaipur - 2000 (122) E.L.T. 45 (T), wherein it is held that the excise authorities cannot go beyond the declared value. In the said order, it is also held that the extended period of limitation cannot be invoked since the entire material was made available to the department.

3. In the present appeals by the Revenue, it is contended that where manifestly the grey fabrics have been priced at the lower value by their suppliers the declaration about the cost construction filed by the processors by itself cannot operate as an estoppel against the Revenue authorities to proceed with the demand of differential duty and the findings of the Tribunal in the case of Sangam Processors (Bhilwara) Ltd. would call for reconsideration. We have heard Shri P.K.Jain, SDR for the appellants and S/Shri R. Swarninathan, Consultant and

Sanjay Khatri, Advocate for the respondents. During the course of hearing of the case, both the sides agreed that the Commissioner (Appeals) has rightly followed the ratio of the decision of the CEGAT in the Sangam Processors (Bhilwara) Ltd. referred to supra. The Tribunal in the above cited decision have extracted in extenso from Para 2 of the judgment of the Hon'ble Supreme Court in Ujagar Prints etc. v. Union of India and Ors. and following the ratio of this judgment they have held, "when the trader gives value as his selling price and the processed fabric, that price given by the trader must be accepted by the job worker for the purpose of payment of duty. The Excise authorities cannot go beyond the declared value".

4. On careful consideration, it is difficult for us to read the ratio of the judgment of the Hon'ble Supreme Court as has been done in the above decision of the CEGAT. The Hon'ble Supreme Court in Para 2 of their judgment - the extracts of which arc also reproduced in the order of the Tribunal -have very clearly held as follows : "Rule 174 of the Central Excise Rules, 19-44 enjoins that when goods owned by one person are manufactured by another the information is required relating to the price at which the said manufacturer is selling the said goods and the person so authorised agrees to discharge all the liabilities under the said Act and the rules made thereunder. The price at which he is selling the goods must be the value of the grey-cloth or fabric plus the value of the job work done plus ihe manufacturing profit and the manufacturing expenses but not any other subsequent profit or expenses. It is necessary to include the processor's expenses, costs and charges plus profit, but it is not necessary to include the trader's profits who gets the fabric processed, because those would be post-manufacturing profits".

5. We are of the view that where admittedly the prices of the grey fabrics are suppressed in the declaration filed by the trader, the processed goods manufactured from such grey fabrics should be liable to be subject to duty at the revised assessable value in terms of the ratio of the judgment of the Hon'ble Supreme Court in Ujagar Prints v.Union of India. In our view the sale price of the raw material supplier is not relevant for the purpose of arriving at the assessable value of such fabrics. The processor in such case however may not be subjected

to any penal action since he has to go by the value of the grey fabrics in his hands as declared by the trader but that does not mean that the value of the processed fabrics will have to be assessed in all cases as declared by him even when the value of the grey fabrics is suppressed by the trader. Since there is a difference of opinion on the subject, the matter is placed before the I lon'ble President for referring it to the Larger Bench to resolve the difference.

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