Simplex Mills Co. Ltd. Vs. Commissioner of Cus. and C. Ex.,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-11-2002

Reported in : (2002)(81)ECC704

Judge : J Balasundaram, S T S.S.

Appellant : Simplex Mills Co. Ltd.

Respondent : Commissioner of Cus. and C. Ex.,

Judgement :

1. This stay application concerns recovery of duty on yarn which was capitvely consumed. The show cause notice was issued alleging that the value for captively consumed yarn was not the same for comparable yarn sold at the factory gate by the same appellant.

2. After hearing both sides, we find that the Assistant Commissioner had come to a very clear finding that the prices of the alleged comparable yarn sold at the factory gate included the component costs which provide for certain processes, narrated by him in his order.

Therefore he came to a conclusion, that there were no factory gate comparable goods and prices available for comparison. In appeal the Revenue did not challenge this finding of fact, arrived at by the Assistant Commissioner. The appeal by the Revenues was on the following grounds relying on certain decisions : (i) Contention of Assistant Commissioner, Central Excise that the value of cotton yarn consumed captively would be on lower side since cotton yarn is cleared at spindle stage and cotton yarn cleared for Home consumption requires further processing which increases value of yarn, therefore, value of goods cleared at factory cannot be made applicable for captive consumption is incorrect. Since duty on cotton yarn is to be paid at spindle stage only then there cannot be two different values, one for captive consumption and another for goods sold at factory gate.

(ii) The normal value applicable to the goods cleared in the wholesale market is in fact applicable to the goods cleared for captive consumption. Duty is charged on deemed Assessable value determined under Section 4 of Central Excise Act, 1944.

The legal position is very clear that there cannot be two different values for assessment of identical goods when normal price at factory gate is available, the same should form the basis for assessment of goods captively consumed. This also finds support from Supreme Court's judgment in the case of Indian Oxygen v. Collector, Central ExciseAshok Leyland Limited v. Collector, Central Excise, Madras -1995 (76) E.L.T. 361 which has been relied upon on the aforesaid Supreme Court's judgment.

3. The Commissioner (Appeals), after setting aside the order of the Assistant Commissioner has accepted the grounds of the department. The Commissioner (Appeals) in his impugned order before us has not determined how the goods were comparable. Prima facie we find that the original authority had found no comparable goods; those prices which were proposed to be adopted, were not comparable, inasmuch as certain other processes went to increase the price of the said comparable goods and those processes were not conducted on the yarn in this case. This finding of fact remains unassailed. We do not find prima facie any reason to uphold the order of the Commissioner (Appeals). We would therefore stay the recovery of the entire amount of duty demanded and not to institute any proceedings under the provisions of Section 35F of the Central Excise Act, 1944.