Commr. of C. Ex. Vs. Vardhman Polytex Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-2002

Reported in : (2002)(82)ECC222

Judge : N T C.N.B., K Kumar

Appellant : Commr. of C. Ex.

Respondent : Vardhman Polytex Ltd.

Judgement :

1. Order-in-appeal No. 382/CE./CHD-II/2001, dated 24-10-2001 of the Commissioner (Appeals), Central Excise, Chandigarh which is impugned in these appeals, related to two issues. One relating to the addition of the amount attributable to purchase tax and the other relating to deduction of sales tax payable from the price of the yarn while fixing its assessable value. The Commissioner held that the amount equal to purchase tax was required to be included in the assessable value and accordingly confirmed duty demand of over Rs. 6 lakhs. He also fixed penalty at an amount equal to the duty. In respect of sales tax, he held that the deduction was due towards sales tax payable and quashed the demand of over Rs. 11 lakhs.

2. Both sides are aggrieved with the above orders. The assessee with the addition of purchase tax and Revenue with the deduction of sales tax. Hence these appeals.

3. Purchase tax was in respect of purchase of cotton, raw material for spinning of yarn. It is the submission of the ld. Counsel for the appellant that purchase tax on cotton was not material for the purpose of assessment of the yarn to Central Excise duty, his contention being that since the yarn was being assessed to duty on ad valorem basis based on its sale price, the price of cotton or its liability to purchase tax were not relevant for the assessment of yarn. This view is entirely in accordance with Section 4 of the Central Excise Act. Where goods are liable to Central Excise duty based on their value, value shall be deemed to the normal price at which such goods are sold. With regard to the yarn in question, no dispute has been raised that its sales price was not the normal price. Therefore, payability of purchase tax on the raw material is not a relevant factor. The assessment is not required to be reopened to recover any short-levy on that score.

Therefore, the assessee's appeal is required to be accepted.

4. With regard to the deduction of sales tax, the position is that the appellant reduced the sales tax payable from the sales price of yarn and arrived at the assessable value and paid duty on the yarn. The submission of the learned Counsel for the appellant is that even though the appellant had applied for exemption from sales tax as available to new units, because of the delay in approving the exemption, the appellant paid the sales tax during the period 1995-96. The deduction claimed from the sales price for the purpose of fixing assessable value was equal to the sales tax so paid. This amount was, however, refunded to the appellant subsequently by the sales tax authorities. The learned Counsel for the appellant has submitted that in these facts and circumstances, the appellant was right in making the deduction towards sales tax payable while working out the assessable value for the year 1995-96. The learned Counsel has further submitted that, of the total amount of Rs. 11,41,945/- held recoverable on account of ineligible deduction towards sales tax, amount of Rs. 10,28,374/- related to the year 1995-96. He submits that the demand of this amount of duty was, in any event, time-barred as no suppression of facts or other contravention of the provisions was involved in the case. The learned DR has submitted that this case rightly involves suppression of facts inasmuch as the appellants did not disclose the fact of refund of sales tax paid. The remaining demand of Rs.

1,13,571 /- is on account of deduction of sales tax during the period when the assessee was exempt from sales tax and no sales tax was actually paid also.

5. Section 4(4)(d)(ii) of the Central Excise Act provides for deduction of sales tax and other taxes "payable" from sale price for arriving at assessable value. In the present case, sales tax was payable by the assessee in 1995-96 and it was actually paid also, its subsequent refund notwithstanding. Therefore, the deduction was rightly claimed and availed of by the appellant in respect of clearances during 1995-96. Assessment of Central Excise duty is at the time of removal of goods. The filing of return also takes place in the month succeeding the assessment. The appellant was neither under any obligation nor had any occasion to report the receipt of refund of sales tax paid. In these circumstances, allegation of suppression of fact with intention to evade duty is not sustainable for recovery of the amount of over Rs. 10,28,374. The demand for that amount, having been raised beyond the normal period of 6 months provided under Section 11A of Central Excise Act has to be held as barred by limitation. The remaining short-levy of Rs. 1,13,571/-, being rightly due and the demand for the same having been raised within 6 months, is payable by the assessee.

6. In the light of the above findings, short-levy of Rs. 1,13,571/- is confirmed. Revenue's appeal is allowed to this extent. The assessees' appeal is allowed in its entirety and demand of duty on account of inclusion of purchase tax in the assessable value and penalty imposed are quashed. Both the appeals are disposed of on these terms.