

Commissioner of Central Excise Vs. Bihar Tubes Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-16-2002

Reported in : (2003)(153)ELT143TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Bihar Tubes Ltd.

Judgement :

1. The above captioned appeals have been preferred by the Revenue against a part of the impugned order dated 8-5-2002 of the Commissioner (Appeals) vide which he had allowed the deemed Modvat credit of various amounts to the respondents, as detailed therein. Since the issue involved in all these appeals is common, these can be disposed of by one order.

2. In all these appeals, the respondents availed the deemed Modvat credit of various amounts as detailed in the show cause notice in terms of explanation to the Notification No. 58/97, dated 30-8-1997 and the Board's Circular No. 331/47/97-CX, dated 30-8-1997. The plea of the Revenue is that, the deemed Modvat credit could be claimed only on the actual price of the goods excluding freight, insurance, sales tax and other charges, although indicated in the invoices of the respondents as those charges could not form the invoice price of the goods.

3. On the other hand, the respondents had taken the stand that the invoice price for the purpose of allowing deemed Modvat credit had been defined by the Board itself in the Circular No. 331/47/97-CX, dated 30-8-1997 read with Explanation to the Notification No. 58/97, and they had taken the Modvat credit accordingly.

4. The Commissioner (Appeals) had rejected the plea of the Revenue and accepted that of the respondents and allowed the deemed Modvat credit of various amounts to the respondents.

4. The learned SDR has reiterated the plea of the Revenue, as detailed above, and contended that the freight, insurance, sales tax and other charges could not form the invoice price and as such the deemed Modvat credit has been wrongly allowed to the respondents by adding those charges in the invoice price of the goods. Therefore, the impugned order of the Commissioner (Appeals) deserves to be set aside. But I am unable to subscribe to this contention of the learned SDR. There is no dispute regarding the purchase of the goods by the respondents from the manufacturer. They had made the payment also by cheque in respect of those goods. In the Explanation to Notification No. 58/97, dated 30-8-1997, the invoice price has been defined as under - Explanation. - "For the purpose of this notification, "invoice price" means the price charged by the manufacturer of inputs and indicated in the invoice accompanying the said inputs, the payment for which is made directly by the manufacturer of the final products to the manufacturer of the said inputs [by cheque drawn on his own bank account or by bank draft or by banker's cheque.]" 5. The Board has also clarified the invoice price for the purpose of allowing the deemed Modvat credit, vide Circular No. 331/47/97-CX, dated 30-8-1997. Para 4(h) of the said Circular is extracted below - Para 4(h) "Deemed Modvat credit has been provided to the down-stream manufacturers who directly procure the hot re-rolled products from the manufacturing units operating under Section 3A. The payment for such procurement should be made by cheque drawn on his own bank account by the down-stream manufacturer directly to Section 3A manufacturers of the re-rolled products. A down-stream manufacturer shall be given deemed credit of 12 per cent of the invoice price of Section 3A manufacturer. The manufacturer's invoice under Section 3A may include freight, insurance, sales tax and other charges, etc." 6. The bare perusal of the

Explanation appended to Notification and the above referred para of the Board's Circular, it is quite evident that deemed Modvat credit equivalent to 12% of the invoice price of the inputs including the tax, freight, handling charges, insurance etc., is admissible to the assessee as total price inclusive of all the charges had been paid by the assessee to the manufacturer. After adding all these charges, the total sale price of the goods is invariably worked out by the manufacturer and as such that price has to be taken to be the invoice price for the purpose of allowing deemed Modvat credit to the assessee. Therefore, the view taken by the Commissioner (Appeals), taking into consideration the above referred explanation appended to Notification and the Board's clarification, through above referred Circular, that the respondents are entitled to deemed Modvat credit equivalent to 12% of the invoice price of the inputs including the taxes as recorded in the invoice, is justifiable in law and no illegality can be found therein.

7. In view of the discussion made above, the impugned order of the Commissioner (Appeals) to the extent to which it has been challenged by the Revenue in these appeals, is upheld. The appeals of the Revenue are accordingly dismissed being without any merit.

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