

Midi Extrusions Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-2003

Reported in : (2003)(88)ECC664

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

Appellant : Midi Extrusions Ltd.

Respondent : Cce

Judgement :

1. In this appeal at the instance of the assessee challenge is against the order passed by Commissioner of Central Excise, Meerut affirming a duty demand of Rs. 28,95,935 under two different show cause notices dated 30.10.2000 and 9.8.2001 Penalty of equal amount imposed is also under challenge.

2. The appellant is engaged in the manufacture of aluminium extruded sections classifiable under Chapter sub-heading 7604.29 of the Central Excise Tariff Act, 1985. The allegation in the show cause notice dated 30.10.2000 was that the appellant had indulged in evading duty in association with M/s. WHITE Metals which according to the Revenue is allied company of the appellant. The allegation is that there are common shareholders and Directors in the two companies. The appellant purchases raw materials from M/s. White Metals and sells finished goods to them. It is alleged that the appellant had utilised Rs. 74,349.16 in the year 1997-98 and Rs. 2 crores in 1998-99 advanced by M/s. White Metals as interest free advance for working capital, that the invoices would show that prices

charged from M/s. White Metals were comparatively lower than the prices charged from other buyers in respect of same kind of goods, that the price of M/s. White Metals was influenced by the interest free loan taken and, therefore, the price for M/s. White Metals was not the sole consideration of sale in terms of Section 4 of the Central Excise Act. It was, therefore, proposed that notional interest @ 18% per annum on the amount of loans taken by the appellant from M/s. White Metals will be included in the value of the goods and the appellant is liable to excise duty on this notional interest which came to Rs. 18,85,030. It was further alleged that the appellant had been collecting additional amount towards Dies Security from its buyers but the said amount was being not included in the value of goods manufactured with the help of such dies by the appellant.

Payment for the dues was in addition to the price charged towards sale of the products. Therefore, it was proposed that aggregate amount of the money coming from buyers in the form of security would be included in the assessable value of the goods and duty on the same which amounts to Rs. 2,97,133 would be payable. The appellant had declared in the invoices that there is no flow back/additional consideration directly or indirectly from the buyers which was a mis-representation with intention to evade payment of duty and, therefore, extended period was sought to be invoked.

3. After the appellant submitted its reply to the show cause notice another show cause notice dated 9.8.2001 was served on it proposing to recover excise duty amounting to Rs. 7,13,772 for the period July 2000 to March 2001. Apart from interest under Section 11AB there was proposal to impose penalty under Rule 173-Q read with Section 11-AC. The appellant submitted its reply to the above show cause notice also.

4. The learned adjudicating authority rejected the contentions raised by the appellant and took the view that price was not the sole consideration in the case of the transaction between the appellant and White Metals, that the price for M/s. White Metals was semi-depressed compared to the price for other buyers and, therefore, a sum which the appellant would have paid as interest if it had taken a loan from Bank or Financial Institution, should be added to the assessable value of

the goods sold to M/s. White Metals. In respect of the Die Security the learned Commissioner found that the appellant did not adduce any evidence to prove that Die Security was returned on completion of supply of finished goods and that the Die Security would form part of the assessable value. The adjudicating authority further held that the larger period of limitation was correctly invoked in this case. The demand was, therefore, confirmed and a penalty of an equivalent amount was imposed, Demand of interest under Section 11-AB was also confirmed.

Aggrieved by the above findings of the Commissioner (Appeals), the assessee has filed the present appeal.

5. The main contentions raised before us by the learned counsel for the appellant is that the advance taken by the appellant from M/s. White Metals has in no way depressed the price for M/s. White Metals when compared to other buyers. If that be so, there is no justification in adding the notional interest to the assessable value. It is the case of the appellant that it had taken loan from State Bank of India for utilization as working capital and not from M/s. White Metals. The goods which are manufactured by the appellant, namely, aluminium extruded sections are customerised kind of product and are manufactured on special orders of the customers. If they are not taken delivery by the customers who had ordered the same, it will be of not much commercial value in the market. Therefore, in order to ensure that the customers purchase the goods which they had ordered the appellant received payment as advance security. The advance taken from M/s. White Metals was also for securing the sale of the goods ordered and not interest free loans as held by the Commissioner. The comparative chart given by the Commissioner in the order would not give a correct picture. A reference to 20 invoices for the period from 1997-98 to 2000-2001 would be totally inadequate to come to the inclusion that the prices for M/s. White Metals was always depressed. The appellant had produced a chart detailing all the sale transactions relied on by the department and the difference in the sale price is also shown.

Alongwith the show cause notice dated 19.8.2001 no separate evidence had been produced by the department in support of the allegation of undervaluation for M/s. White Metals. The appellant would submit that the price charged for all buyers are

broadly the same during a contemporary period. However, there will be some deviation in the prices due to quality of goods, quantity of goods ordered and availability of goods vis-a-vis demand of the market etc. But the variation is negligible. It is contended that the quality of goods supplied to Ford Motors is much superior and cannot be compared to supply of goods to other buyers.

6. Relying on the decision of Union of India v. Lakshmi Machine Works Limited, 1995 (51) ECC 107 (Mad) : 1995 (77) ELT 799 (Mad), Mahavir Aluminium Limited v. CCE Jaipur, CCE v. Orient Engineers (P) Ltd., CCE v. Festo Elgo (P) Ltd., 1998 (100) ELT 175 and CCE v. Chemical Valves P. Ltd., 1999 (113) ELT 574, the appellant would contend that unless nexus has been established between the advance and ultimate price of the goods the amount of advance cannot be considered as an additional consideration for the purpose of Section 4 of the Central Excise Act. Placing reliance on the Circular No. 404/37/98 issued by Central Board of Excise & Customs the appellant would contend that notional interest on advances deposited by the wholesale buyers would be included for the purpose of determination of assessable value only if the deposit influences the fixation of sale price either by way of charging a less price from or offering a special discount to the buyer who has given the deposit. In the present case the appellant would submit that there is no proof to show that on account of advance deposits there has been reduction in the price to those buyers or to all buyers.

7. Regarding the allegation that the appellant had collected additional amount towards die security it is submitted that the appellant used to take such die security in cases where the goods of the buyers were customized and the die had to be prepared specially for them. However, such security used to be refunded when the buyers used to pick up a certain quantity of goods. Department has also admitted that in certain cases the security had been returned. In all cases the die security could not be returned since the buyers failed to purchase certain quantity of goods from the appellant. The amount collected for the cost of dies as any other cost incurred in the capital goods used in the manufacture of goods was apportioned and included in the price of the goods on which the appellant is paying duty. When the entire cost of the die is apportioned the die security is returned. It is also submitted that the price of goods in cases of customized die

was much more than the price of goods charged from other routine buyers.

8. With respect to the invocation of extended period of limitation, it is contended that there is no intention on the part of the assessee to evade duty. The decision which had been relied on by the Commissioner to reject the petitioner's contention had been later reversed by the Supreme Court in *Cosmic Dye Chemicals v. CCE, Bombay*, 1994 (48) ECC 55 (SC) : 2995 (58) ECR 232. The appellant submits that no interest is liable to be paid on penalty imposed.

9. The learned DR, on the other hand, submitted that all the contentions raised by the appellant before the Tribunal had been adverted to by the adjudicating authority. Therefore, there is no reason to take a different view. It is not disputed before us that in order to add the notional interest of the advance taken by the appellant from M/s. White Metals, it has to be proved that the price in respect of sale to M/s. White Metals was in any way depressed due to the reason of the advance. To show that there is a price difference in respect of the sale to M/s. White Metals and other buyers the adjudicating authority has referred to about 20 invoices. We are inclined to accept the contention raised by the appellant that only on the basis of those invoices it cannot be taken that the price had been depressed in favour of White Metals for the entire period of demand. On going through the detailed chart produced by the appellant it is seen that in most of the cases there is no price difference. Apart from the above, even in cases where there is a price difference it is only marginal. We are of the view that the Revenue has not been able to substantiate the allegation that the appellant's taking certain advance from M/s. White Metals has the effect of suppressing the price. Under these circumstances, there was no justification for adding the notional interest to the assessable value of the goods sold to M/s. White Metals.

10. In respect of the die advances also we find that the contentions raised by the appellant are to be accepted. Even though the Commissioner rejects the explanation offered by the assessee that the die security was being returned, after the purchase of certain quantity of goods by the buyer the fact that in certain cases such refund had been made is admitted in the order of the Commissioner. This would confirm the explanation offered by the assessee. In the nature of the goods

manufactured by the appellant explanation offered regarding the retention of die security till a substantial quantity of the customized goods are purchased by the buyer is only to be accepted. We, therefore, find no merit in adding the die security to the assessable value. Since we are holding in favour of the appellant on merits, it is not necessary for us to go into the contention regarding limitation. We, therefore, set aside the impugned order and allow the appeal.

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