

Collector of Central Excise Vs. Central India Board Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-1987

Reported in : (1987)(11)LC734Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Central India Board Products

Judgement :

1. The appellant, the Collector of Central Excise, Indore, says that the Collector of Central Excise (Appeals), New Delhi, was not correct in his assessment that under notification No. 127/78-CE., dated 29-5-1978 the value of the unveneered particle board used in the manufacture of veneered board should be calculated up to the stage of sanding and levelling. This notification allows exemption from so much of the excise duty as is equivalent of the duty of excise leviable with reference to that part of the value thereof which represents the value of the unveneered particle board.
2. The learned counsel for the department, Mr. Doiphode, argued that the assessee tried to increase the value of the unveneered board only because by this increase there was a larger deduction from the excise duty payable by them. By means of adding the value of sanding and levelling, the value of the unveneered board increased.
3. The learned counsel said that the factory clears only unsanded, unlevelled unveneered board. The sanding and levelling is done only for the purpose of

veneering with plywood and, therefore, this process has no relevance to the value of unveneered board as known in the market.

He illustrated this by saying that if unveneered boards are purchased from another factory for veneering, the claim for deduction can be only equal to the price paid to that factory for the unveneered boards. He repeated that there was no sale at all of sanded and levelled unveneered boards, and so the value of such boards can have no connection with assessments.

4. He quoted 1980 ELT 704 re: Indian Vegetable Products, and read paragraph 8 of the judgment. He also read paragraph 2 of 1986 (25) ELT 625 re: Shalimar Textiles.

5. There was no time bar, because there had been a clear mis-statement on the part of the factory by reason of which they were able to clear their veneered boards by taking a higher deduction to which they were not entitled.

6. The learned counsel for the appellant said that from the wording of the notification, the value, whatever that may be, of the unveneered particle board is to be excluded. Their unveneered particle board is still unveneered even after it is sanded and levelled. It does not matter for what purpose the sanding and levelling is done. The counsel for the department says this is done for the purpose of veneering. But that fact does not detract from the case, as by virtue of sanding and levelling, the unveneered board does not cease to be unveneered; it continues to be unveneered till the stage it is glued preparatory to the affixation of the plywood skin.

7. He strongly commended the order of the Collector of Central Excise (Appeals), New Delhi, which is the subject of appeal before us i.e.

order No. 205-CE/APPL/IND/85/770, dated 8-7-1985 and the analysis that Rule 6(b)(ii) of the Central Excise Valuation Rules, 1975, to be read with Section 4(1)(b) of the Central Excises and Salt Act, 1944, states that in such cases, the value has to be determined on the basis of cost of production or manufacture including profits, if any, which an assessee has normally earned on the sale of such goods.

In the present case, the Collector said that we have to find the cost of production or manufacture of unveneered particle boards and it is an admitted fact that even after sanding and levelling unveneered particle boards continue to remain as unveneered particle boards and they do not become veneered particle boards. In the circumstances, held the learned Collector, the cost incurred on sanding and levelling of the unveneered particle boards would enter the cost of production or manufacture of the unveneered particle boards.

8. The learned counsel said that there was no misstatement and he then read the order of the Assistant Collector which said that there was a mistake in the interpretation of the notification. If this is so, he said, there cannot be any charge of misstatement. He also referred to paragraph 10 and paragraph 11 of their appeal of May, 1985 to the Collector of Appeals. He ended by saying that the judgments cited by the learned SDR were not relevant.

9. Miscellaneous petitions and cross objections were filed on behalf of the factory, but they are not much use, because the additional documents presented with the miscellaneous application refer only to the process of manufacture of veneered and unveneered particle boards.

The cross objection contains arguments in favour of their own case.

10. We shall open our examination by reproducing notification No.127/78-CE., dated 29th May, 1978. It reads :- In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts particle boards, veneered with plywood panels or veneered with single ply veneer on one or both sides and falling under Item 16-B of the first schedule of the Central Excises and Salt Act, 1944 (1 of 1944) from so much of the duty of excise as is equivalent of the duty of excise leviable with reference to that part of the value thereof which represents the value of unveneered particle boards.

It is the claim of the manufacturers that the value up to and including the cost of sanding and levelling is the value which represents the value of unveneered particle boards. They maintain that it makes no difference if they do not sell such sanded and levelled boards; they admit that they do not, in fact, sell them. To go

by the words of the notification alone, it is the value of the board which must be excluded and the value of that board undoubtedly includes the cost of sanding and levelling. It is that board which they use for veneering.

11. The unacceptability of this argument arises from the fact that, first of all, the value is of an article which does not figure in any assessment and for whose value there is no real measure. The value of the sanded and levelled unveneered board is not susceptible to determination by the forces of supply and demand, by sale, or other similar market forces. We have seen that these boards are not sold; Only the unsanded, unlevelled, unveneered boards are sold; these have a regular value and their value is subject to the market forces of supply and demand and are capable of determination in a time-tested manner.

The learned counsel for the department was right when he said that the cost of sanding and levelling is not part of the value of the unveneered board, but is only a cost incidental and preparatory to the veneering and is necessary only because the board is going to receive the plywood skin/veneer.

12. To argue, as the respondents do, is to overlook the fact that value for the purpose of this notification must be defined in accordance with the definition of value of the Act, in the absence of anything to the contrary. Value under central excise, first and foremost, is relevant only when it forms the basis or reference for a charge of duty. For this purpose, it is defined in Section 4 of the Central Excises and Salt Act; and this is how the first sentence goes :- Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be - (a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale; [The rest of the section is not reproduced as it is not necessary for our purpose; but it can be referred to if desired].

13. Value is a value at which goods are sold, or are ordinarily sold by the assessee in the course of wholesale trade. Value by itself would have no meaning and would have no place and would exercise no function in our central excise

calculations. An imaginary price or value would not count and cannot figure in assessments. A value which attaches to an article of sentimental value, but which does not determine its sale in the market, would not assume any office under the law. The value must be the normal price; that is to say, it must be a price that the article fetches in actual sale. The value is not the value one would tag to an article; it would have to be the price in cold money, the price at which it is bought and sold, a price which can be determined with reference to its composition, component, cost; a price that can be perceived in relation to known constituents; that price alone can be deemed to be such value.

14. A question can be asked whether this value defined by Section 4 would apply to the calculation of the value which represents the value of the unveneered particle boards. It is not without significance that the wording in the notification bears a close resemblance to the terms of the section. The term "the duty of excise is chargeable on any excisable goods with reference to value" appearing in the first sentence of Section 4 is almost repeated, though in a somewhat modified form, in the term "the duty of excise leviable with reference to that part of the value thereof" in the notification. The duty of excise to be deducted is the duty of excise equivalent to the duty of excise leviable with reference to that part of the value which represents the value of the unveneered particle board. This is the key. To determine what duty is to be reduced or deducted, we must assess the duty with reference to the value of the unveneered particle board. When we do so, our first task will be to ascertain the value with reference to which the duty is chargeable. Since the value must be the price at which goods are sold, the price to be deemed as that value can only be the price at which unveneered boards are sold. Now, the facts are coming into their own; only unsanded, unlevelled, unveneered boards are sold; they have a price in the course of wholesale trade and, therefore, it is only this price which is readily ascertainable so as to be capable of being deemed the value of the unveneered boards.

15. The learned Collector (Appeals) was not correct when he relied on Rule 6(b)(ii) of the Central Excise Valuation Rules, on the ground that this was relevant to the purpose of the enquiry. This rule provides - "If the value cannot be determined under Sub-clause (i), on the cost of production or manufacture including profits, if

any, which the assessee would have earned on the sale of such goods." Since under Rule 2, value is defined as a value given under Section 4 of the Act,' we can see from this why this sub-rule cannot apply to the valuation of the sanded, levelled, unveneered particle board. The application of the Central Excise Valuation Rules is only for the purpose of finding out as assessable value. Indeed, Section 4 of the Central Excises and Salt Act and the rules made under it have only one goal, and that is, to determine a price to be deemed as the value for assessment. When there is not going to be an assessment, it is futile to say that the valuation rules will help in determining a value. The unveneered, sanded, levelled boards are not to have a value attached to them for the purpose of assessment to duty; they would not, therefore, invite the operation of the Central Excise Valuation Rules.

16. Indeed, the object of these proceedings is not the valuation of the sanded, levelled unveneered boards. There cannot, therefore, be this elaborate process under the Central Excise Valuation Rules to uncover the cost of production or manufacture, the profits, if any, that would have been earned on the sale of these goods etc. etc. While such proceedings might capably fit the unsanded, unlevelled, unveneered boards, if the need for such valuation should arise, because these boards are sold. Fortunately, they do not require, as far as we can tell, the help of the valuation rules; but that is not a matter of concern for us.

17. Therefore, the sanded, levelled boards do not have a value that is intelligible in terms of the Central Excises and Salt Act; the value assigned to them by their manufacturers and approved by the Collector (Appeals) is not a value that is ascertainable, that can be arrived at, that can be measured and examined by the tests provided by the Act, and, hence, is not a value that can be relied upon for the purposes of the notification No. 127/78-CE.18. The Assistant Collector, however, was wrong to say that there had been a misstatement. He himself says that there had been a misunderstanding in the interpretation. If there had been a misunderstanding in the interpretation, there cannot have been any misstatement. An incorrect interpretation of the notification does not amount to a misstatement. Furthermore, the Assistant Collector shows his inclination by not imposing any penalty. A loss of nearly a million and a half rupees should have invited a fairly

large sum of penalty on the defaulter. Since this was not imposed, one must conclude that there was no misleading statement or fraudulent action. Therefore, the demands can operate only within the time bar of six months as prescribed by law.

19. There is little doubt that M/s. Central India Board Products have made their claim only with the object of reducing their duty liability.

They ought not to have done this and should not have cleared the boards by paying a duty which was not correct. The Supreme Court in 1985 5 ECC 259 re: McDowell and Company, ruled that tax avoidance was as bad as tax evasion and it disapproved a colourable device to avoid tax. It was the obligation of every citizen to pay his tax honestly. It is no good, according to the judgment, to be able to say that one is keeping within the letters of the law and simply avoiding tax and that such an action is not equal to evasion. It is just as bad, says the Hon'ble Court, and one is in respectful agreement. M/s. Central India Board Products can realise quite well that what they ask for is an inclusion of a cost that they incurred only for the purpose of preparing the unveneered board for receiving the veneer. It has nothing to do with the improvement of the unveneered board to give it a better quality or finish so that it will fetch a better market. The sanding and levelling is only to enable the veneer skin to have a uniform and even substrate as this is the best surface for the skin to adhere to, and makes for a good contact.

20. But by making this claim, the manufacturers seek to reduce their duty payment in a way that is difficult to approve and would certainly not find favour with most right thinking people.

21. The order-in-appeal is set aside and the demands may be enforced, but only for six months.

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