

Commissioner of Central Excise Vs. Blue Blend (i) Ltd., Sethia

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-23-2004

Reported in : (2004)(173)ELT182Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Blue Blend (i) Ltd., Sethia

Judgement :

1. The assessees herein are engaged in the manufacture of PTY/Twisted Yarn falling under CET Sub-Heading 54.02. On the basis of intelligence received by officers of the Anti-Evasion Directorate that they are indulging in evasion of duty by resorting to under-valuation and clandestine clearances of PTY, that they were clearing PTY from the factory gate at a lower value in the name of fictitious and non existent firms while goods were actually being cleared at godown Bhiwandi, (Maharashtra) from where they are subsequently being sold through brokers to actual buyers at higher value, search was conducted by officers in the godown at Bhiwandi where PTY cleared from Daman, Silvassa units of the assesses was stored and also the premises of the Transporters, and records were seized. Show cause notices were thereafter issued alleging that the assessees have issued invoices to show that the sale had been effected at the factory gate whereas sales were actually effected from godown and warehouses of the transporters at Bhiwandi and that the sale price shown in the invoice did not reflect the correct assessable value since the buyers names figuring in the invoices were fictitious. It

was further alleged that the sale between buyer and seller was finalised and payments were received through crossed bearer cheque and not through A/c payee cheque, sale price shown on the invoice did not reflect the correct assessable value because the buyers whose names appeared in the invoices were fictitious, while delivery from the godown was given to actual buyers and not those shown in the invoices. It was proposed to compute the value of the PTY on the basis of Bank statements furnished by the manufacturers to Bank for claiming credit facility. The details of the show cause notices are as under:-

						Sr.
date	of	SCN	Address	of	Unit	Duty
amount	No.					

20.4.90 Murbad, Thane.

94,62,720/-2	20.4.00	Kachigaon, Daman	1,77,17,498/-3	20.4.00	Kachigaon, Daman
9,96,19,789/-4	18.4.00	Amli, Silvassa	4,97,44,821/-5	20.4.00	Rakholi, Silvassa,
					3,18,03,950/-

2. The notices also proposed levy of interest at the rate of 20% per annum in terms of Section 11AB and penalty of amount equal to duty under Section 11AC of the Central Excise Act 1944 and penalty under Rule 209A on the Director of the assessees, on M/s. Sethia Transport Company and Gupta Cranes & Storage Pvt. Ltd. The Commissioner who adjudicated the notices dropped the charges raised in the show cause notices; hence these appeals from the Revenue.

3. Aothough, the Id.D.R. requested for an adjournment on the ground that he needed some more time to study the case which involves heavy amounts, we do not accede to the request as it is brought to our notice by the Id.counsel for the respondents that the issue in dispute stands covered by the earlier orders of the Tribunal and hence proceeded to hear both sides and perused the records.

4. The show cause notices seek to apply the provisions of Section 4(1)(b) and Rules 7 of the Central Excise Valuation Rules, 1975 as the normal price of PTY sold by them is not ascertainable. Section 4(1)(a) as it stood during the relevant period defines the price of each place of removal as the normal price. The depot is

defined to be a place of removal and therefore the Bhiwandi godown qualifies to be the place of removal. The existence of sale at the depot is admitted in the show cause notice itself. The Commissioner has rightly held that it is the settled legal position that before seeking valuation in terms of provisions of Section 4(1)(b), the methodology prescribed under Rule 4(1)(a) must be exhausted. Once sales from depot have taken place, the department cannot resort to valuation under Section 4(1)(b). Therefore, the method of determination of assessable value adopted in the show cause notice is clearly erroneous. Further, the Commissioner has considered the stand of the assessees that actual buyers/Bhiwandi parties had been identified by local transporters and held that the sales to Bhiwandi buyers are real, as buyers had been identified in some cases and the payments are received through account payee cheques also. There is no rebuttal to the above finding contained in para 43 of the impugned order in the appeals filed before us. The computation of value on the basis of Bank's statement furnished by the assessees to the banks for claiming credit facility has also been rightly found by the Commissioner to be in correct, in the light of the decision of the Tribunal in the case of Rishab Refractories Pvt. Ltd. v. Commissioner (1996(87)ELT 93). We also note that in the case of other manufacturers of PTY twisted yarn. wherein show cause notices raising identical grounds were issued, the Tribunal has held that the allegation of under valuation fails and that demand on that basis is unsustainable, in the case of Beekaylon Synthetics v. CCE, Surat/Mumbai (2003(158) E.L.T.307), the Tribunal has held as under:- "In the light of the above authorities, we hold that bank statement by itself cannot be the basis for holding that there was undervaluation. It is relevant to note that the Commissioner held that "although this is a case of alleged undervaluation, there is absolutely no whisper of any evidence of flow back of additional consideration from the buyer to the manufacturer, either directly or through any channel". The Commissioner has further held that the burden is on the Revenue to prove that additional consideration has flown back from buyers which the Revenue has not satisfied. He has also held that payment by crossed bearer cheque cannot by itself suggest cash payment or excess flow back to manufacturer or an additional consideration over and above the cheque payment. So long as the Revenue has not been successful in proving that the actual buyer had paid an amount much more than

the value shown in the invoice issued at the time of removal of the goods from the factory, the allegation of undervaluation should fail and no demand on that basis can be sustained. Since we hold that the entire demand is not sustainable, it is not necessary for us to refer and consider in detail the contention raised in the appeals by the Revenue challenging the order of the Commissioner for the reason that he has not sustained the entire demand in the show cause notice. Since we are holding that the Revenue has not been successful in proving the allegation of undervaluation, we are not going into the correctness or otherwise of the contentions raised by the assesseees that, as a matter of fact, sale to the Bhiwandi buyers took place at the factory gate and not at Bhiwandi." 5. The ratio of the above decisions is squarely applicable to the present case. Following the ratio thereof, and also for the other reasons set out herein above, we decline to interfere with the impugned order and accordingly uphold the same and reject the appeals.

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