

Vasant Spinners Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-15-2004

Reported in : (2004)(97)ECC625

Judge : J Balasundaram, A T V.K.

Appellant : Vasant Spinners

Respondent : Cce

Judgement :

1. M/s. Vasant Spinners have filed the present appeal being aggrieved by the Order-in-Appeal No. 443/2003 dated 27.10.2003 passed by the Commissioner (Appeals).

2. We heard Shir J.P. Kaushik, learned Advocate for the appellants and Shri S.C. Pushkarna, learned D.R. for the Revenue. The learned Advocate submitted that the appellants manufacture cotton yarn; that single yarn is captively converted into multiple fold/cone/cross reel/plain reel yarn before clearance from the factory; that the yarn is sold at the factory gate to the dealers, from depots and through the consignment agents; that on their visit on 30.6.98, Central Excise officers found single and multifold cone yarn valued at Rs. 4,71,100, which was not entered in the R.G. I register; that the officers also found another lot of single and multifold yarn valued at Rs. 1,22,761 unaccounted in R.G. I register; that these yarn were seized by the officers; that on scrutiny of the documents, the officers pointed out that they had been undervaluing the yarn sold through the consignment agents

since, according to them, the assessable value should have been the sale price of consignment agents minus excise duty, cess, sales tax, freight and octroi charges up to October 1996; that after 1996, the assessable value of yarn sold through consignment agents, should have been the sale price of consignment agents minus excise duty, cess and sales tax; that after October 1996, freight and octroi was not allowed deduction; that a short levy of Rs. 14,766 was pointed out, which was paid by them through debit entry in R.G. 23A Part II; that, subsequently, the Additional Commissioner, under the Adjudication Order No. 1/2000 dated 30.10.2000, confirmed the demand of duty and imposed a penalty of equal amount of Rs. 14,766 under Section 11 AC of the Central Excise Act and another penalty of Rs. 10,000 under Rule 173Q of the Central Excise Rules, 1944 besides confiscating single and multifold yarn valued at Rs. 4,71,100 with an option to redeem the same on payment of fine of Rs. 1.50 lakh; that the additional Commissioner, however, released the single and multifold yarn valued at Rs. 122,761; that on appeal, the Commissioner (Appeals) has confirmed the Order-in-Original except setting aside the penalty of Rs. 14,766 imposed under Section 11AC of the Central Excise Act.

3. The learned Advocate submitted that before October 1996, if the goods are sold at factory gate, the said price would be the assessable value for the purpose of assessment under Section 4 of the Central Excise Act as it existed at that time; that it has been held by the Supreme Court in the case of Indian Oxygen Ltd. v. CCE, 1988 (36) ELT 723 (SC) that since the ex-factory price is ascertainable, such ex-factory price shall be the basis for determination of the value under Section 4 of the Act. In respect of assessable value w.e.f.

October 1996, the learned Advocate submitted that the deduction on account of octroi should be allowed as octroi is nothing but a tax, the deduction of which is permissible under Section 4(4)(D)(ii) of the Central Excise Act. After considering the submissions of both the sides, we agree with the submissions made by the learned Advocate, that as ex-factory price of the goods is available during the period from April to September 1996, the assessable value for the goods sold by the consignment agents has to be determined on the basis of ex-factory price as at the relevant time the place of removal was the factory gate. This was also the

judgment of the Supreme Court in the case of Indian Oxygen Ltd. We also agree with the learned Advocate that octroi, being a tax, has to be deducted from the assessable value even after September 1996 as there was no amendment in Section 4(4)(d)(ii) of the Central Excise Act. We, therefore, allow the appeal on these two counts and remand the matter to the jurisdictional Adjudicating Authority to re-calculate the quantum of duty payable by the appellants.

4. Regarding confiscation of the yarn, the learned Advocate submitted that since the commencement of the appellant unit, their practice was to enter the yarn in R.G. I account only on completion of the process of manufacture in the form it was cleared from the factory; that the yarn was found in the processing section and it was to be processed further. The learned Advocate mentioned that in view of these facts and circumstances, he is praying for leniency in imposition of redemption fine and penalty.

5. After considering the submissions of both the sides, we observe that the factual position is that single yarn, which had been manufactured by them, had not been entered in R.G. I register, which was the requirement of the law at the material time. In view of this, the yarn, in question, is liable to confiscation. The Commissioner (Appeals) has also relied upon the decision of the Tribunal in the case of CCE v. Hard Core (India), 2003 (58) RLT 153. We, therefore, uphold the confiscation of the yarn. However, taking into consideration the facts and circumstances of the case, we reduce the redemption fine to Rs. 50,000. The penalty imposed on the appellants is on the higher side which is also reduced to Rs. 5,000. The appeal is disposed of in the above terms.

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