The Commissioner of Central Vs. Ispat Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-16-2004

Judge : S T S.S., K Kumar

Appellant : The Commissioner of Central

Respondent : ispat Industries Ltd.

Judgement :

1. Revenue is in appeal. Respondents herein are an assessee under Central Excise Act 1944. They manufacture and pay duty on goods under head 72 of Central Excise Tariff Act 1985. The sale of final products was made through depots, Revenue's case is that a deduction was claimed on account of transport charges incurred for transporting the goods from factory gate to the depots. This was not shown separately on invoices issued from the factory. Since there was no delivery at the factory gate, the ownership remained with the assessee therefore proviso of Section 41(a) and Rule 5 of the Valuation Rule 2000 are not applicable the valuation should be arrived under Section 4(1) b Rule 7 of the Valuation Rules. The demand being for the period January 2002 to March 2002, the provisions of Section 4 as on 1.7.2000 are applicable.

2 a) The original authority which finalizing the provisional assessment for the said period disallowed the deductions on account of freight shown separately in the depot invoices on the grounds that under New Valuation Rule the assessment of the goods sold though depot was to be made as per Rule 7 in situation under Section 4(1)(b). It was further observed that Rule 5 excluded cases covered by

Section 4 (1) (b).

Therefore cost of transport from the factory gate to depot was not permissible deduction.

i) Interpreting the term 'place of removal' and on observing that in Section 4 (3) (c) with effect for 1.7.2000 except Clause (iii) of the erstwhile Section 4 (3) (c) the other clauses of factory and duty free wherehouse were pari-materia Clause (iii) which read as follows:- "(iii) a depot, premises or any other place or premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory and," Therefore, the 'depot' from the goods are 'delivered' to the customers in this case is not 'place of removal'. The 'place of removal' in this case would be factory gate and Rule 5 would be thus applicable, since, the goods at the depot were duty paid.

ii) the freight deductions, claimed are on account of freight from the factory gate i.e. 'place of removal' to the customers premises i.e. 'place of delivery' and is admissible under Rule 5, as it was claimed to be shown separately on invoices issued to the Customer.

(iii) Rule 7 claimed by the Revenue, can not be applied without ex-hausting Rules 1 to 6 Rule 7 also does not provide for a value to be inclusive of freight upto depot.

a) 'place of removal' in this case is not the depot, due to deletion of Clause (iii) of erstwhile Section 4 (3) (c) as observed and found by the Commissioner of Central Excise (Appeals) is to be upheld. Valuation has to be arrived at Their case, on the basis of the price at factory gate.

b) Rule 5 of Valuation Rule 2000, is applicable in this case, as that Rule is to be invoked when the circumstances exist of the goods being delivered, ex-a place, other than the 'place of removal' as in this case ex-duty paid godown of depots the delivery is effected, while 'place of removal' is the factory gate. As per the mandate of this Rule 5, the freight in actual, from 'place of removals' i.e.

factory gate up to the place of delivery of goods i.e. at depot or and customers premises, if charged and shown separately on the invoices is to be deducted.

c) When valuation is to be and can be determined under Rule 5, Rule 7 is not applicable.

d) No. reasons are therefore found to set aside the Commissioner of Central Excise (Appeals) findings.