

Commissioner of Central Excise Vs. Prem Khalsa Iron and Steel Rolling

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-13-2004

Reported in : (2004)(98)ECC413

Judge : J Balasundaram, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Prem Khalsa Iron and Steel Rolling

Judgement :

1. The respondents herein are engaged in job work for conversion of raw material i.e. semi-finished goods of iron and steel products supplied by Steel Authority of India Limited into finished goods, which are sold on behalf of the SAIL. Declarations were filed by them in Annexure-II Proforma as required under the proviso to Rule 173C(1) of the Central Excise Rules, 1944 for determination of the value under Section 4 of the Central Excise Act. No break-up of sale value of SAIL was given.

The Department was of the view that the prices claimed for approval on the basis of selling price of such goods by the SAIL was not correct as the respondents are job workers and clearing the goods after paying duty directly from their factory to the consumer and that no comparable goods are sold at Mandi Gobindgarh by SAIL. Thus the clearances of goods at the factory gate were required to be considered as independent sale and the respondents were thus required to file declaration by considering the landed cost of raw material at factory gate, job

worker charges, job worker's profit or any other consideration flowing directly or indirectly as laid down by the Hon'ble Supreme Court in the case of Ujagar Prints v. Union of India, 1989 (21) ECC 11 (SC) : 1989 (39) ELT 493 (SC). On this basis 15 show cause notices involving central excise duty Rs. 35,91,315 were issued which were adjudicated by the Assistant Commissioner who after allowing deduction of element of Modvat involved on the inputs used in the final products, confirmed the demand of Rs. 10,48,026 and also imposed a penalty of Rs. 1,00,000 The Commissioner (Appeals) set aside the adjudication order relying upon the Tribunal's order in the case of CCE, Chandigarh v. M/s. Surindra Steel Rolling Mills and M/s. Karam Steel Corp. - Final Order Nos.

36-49/2003-NB(A) dated 15/16.1.2003. Hence this appeal by the Revenue.

2. We have heard both sides. The Revenue does not dispute that the Tribunal's order cited supra is on identical issue. In that case the Tribunal held as under: The appellants/job worker fall in the category of manufacturers liable to pay Central Excise duty. According to the law, laid down by the Apex Court in the Ujagar Print case, assessable value of processed goods should take in the value of the raw material and the conversion cost and the profits of job worker. It is not to include the profit of the merchant who finally sells the processed goods. In the present case, the goods were sold on behalf of SAIL and the appellants paid duty at the time of removal of goods on the sale price of SAIL. Thus, it is case where the assessable value included all the cost and profit upto the sale of the goods i.e. the profit of the merchant (SAIL) and not merely the cost of the materials and the cost of conversion by the appellants job workers and their profit. The assessable value adopted by the appellants could only be in excess of the assessable value liable to be adopted by the appellants. There could no arguing that, by adopting the sale price of SAIL, the appellants under-valued the goods and paid less duty than was due. It is apparent that there could be no short levy in respect of the goods cleared by the appellants. The duty demands made against the appellants are clearly the result of a gross misunderstanding of the principles of valuation laid down by the Apex Court in the Ujagar Prints case. These demands are not sustainable".

3. The only ground urged in the appeal before us is that the Department has filed a Reference Application before the Hon'ble Punjab & Haryana High Court against the Tribunal's order. Since the issue involved admittedly stands covered by the earlier decision in the case of M/s.

Surindra Steel Rolling Mills (supra) which has not been shown to have been either stayed or overruled, we hold that there is no ground to interfere with the impugned order and accordingly uphold the same and reject the appeal.

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