# Modi Arc Electrodes Co. Vs. Cce

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**SooperKanoon Citation** : sooperkanoon.com/36551

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-20-2004

**Reported in** : (2004)(117)LC457Tri(Delhi)

**Judge** : A T V.K., P Bajaj

**Appellant** : Modi Arc Electrodes Co.

**Respondent** : Cce

**Judgement** :

1. The issue involved in this appeal, filed by M/s. Modi Arc Electrodes Co., relates to the determination of assessable value of the goods cleared to depot for onward sales.

2. Shri R. Chibber, learned Advocate, submitted that the Appellants manufacture electrodes which are being sold by them at the factory gate as well as are transferred to their depot for onward sale; that at they were paying the duty on the electrodes removed to their depot at the price at which the goods were being sold at factory gate; that the Dy.

Commissioner under Order-in-Original No. 34/2001 dated 29.5.2001 has confirmed the demand of duty on the ground that the goods were sold on higher price subsequently from the depot and the assessable value in the case of goods sold from depot would be finally determined only at the time goods entered in the wholesale trade and the mere clearance from the factory gate to the depot cannot be taken as complete sale transaction at the factory gate; that the Commissioner (Appeals) has also rejected their appeal under the impugned Order holding that the Appellants were charging higher incidence of duty as well as higher assessable value at their depot and such higher incidence of duty should be deposited by them with the Government under Section 11D of the Central Excise Act. The learned Advocate, further, submitted that though the show cause notice had made allegation regarding charging higher incidence of Excise duty, the same was not upheld in the Adjudication Order; that since the Adjudication Order was not challenged, the finding of the Commissioner (Appeals) that the higher incidence of duty should have been deposited with the Government under Section 11D is not correct; that the Commissioner (Appeals) was not legally empowered to take the said point and give his decision; that as the factory gate price is available the assessable value of the goods cleared to Depot has to be assessed on the basis of factory gate price only. He relied upon the decision of the Tribunal in the case of CCE v.D.C.L. Polyster Ltd. . We also heard Mrs. Krishna A.Mishra, learned SDR.3. We have considered the submissions of both the sides. The period involved in the present matter is 1986-1987 during which period Section 4 of the Central Excise Act provided that the value shall be deemed to be normal price of the goods, that is to say, price at which the goods are ordinarily sold by the assessee to a buyer in the course of whole sale 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. It has not been disputed by the Revenue that the Appellants are selling their final product electrodes at factory gate.

Thus the normal price of the goods manufactured and sold by the Appellants is available at the place and time of removal of the goods i.e. factory gate. In view of the provision of Section 4 of the Central Excise Act the said price has to be taken as assessable value for the purpose of collecting Central Excise duty. The Appellate Tribunal in the case of CCE, Nagpur v. DCL Polyster Ltd. , relying upon the judgment of the Supreme Court in the case of Indian Oxygen Ltd. v. CCE has held that the factory gate price will only be relevant irrespective of the fact of percentage of sales made at factory gate. "As long as there is existence of factory gate price that alone will be taken into consideration for the purpose of levy of duty." The Supreme Court in the case of Indian Oxygen Ltd. (supra) has held that if there was an ex-factory price which is ascertainable," that should be the basis upon which the value is to be determined, the other expenses, cost or charges must be excluded." As in the present case the existence of factory gate price is not in dispute the assessment shall be made at that price only Accordingly we set aside the impugned Order and allow the appeal.