

Cce Vs. Emtee Poly Yarn

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-28-2004

Reported in : (2004)(97)ECC121

Judge : J Balasundaram, Vice, A T V.K.

Appellant : Cce

Respondent : Emtee Poly Yarn

Judgement :

1. The issue for determination in the these appeals filed by the Revenue against the orders passed by the Commissioner (Adjudication) Central Excise, Mumbai is whether the Commissioner was justified in holding that the Department has failed to prove under-valuation at the instance of the assesseees as alleged in the show cause notices.

2. The respondents are engaged in the manufacture of PTY Twisted Yarn falling under Chapter sub-heading 54.02 of the Schedule to the Central Excise Tariff Act, 1985. Intelligence was received that they were indulging in evasion of central excise duty by resorting to undervaluation and clandestine clearance of PTY; that they were clearing PTY from their factory gate at a very low value in the name of fictitious/or non-existing firms, while the goods were actually being cleared to godown at Bhiwandi etc. from where they were subsequently being sold to actual buyers at higher value. Show cause notices were therefore issued alleging that the respondents had issued invoices to show that the sale had been effected at the

factory gate, whereas sales were actually effected from godown/warehouses of the transporters at Bhiwandi. It was alleged that the sale price shown in the invoice did not reflected the correct assessable value since the buyers name shown in the invoice were fictitious. It was further alleged that the sale between the buyer and the seller was finalized and the payments from actual buyers were received through crossed bearer cheques and not through account payee cheques. The Commissioner dropped the proceedings holding, inter-alia, that the allegation of the Revenue that the goods were sold from depots or godown of the transporter at a price higher than that declared in the corresponding invoices has not been established. Hence these appeals.

3. On hearing both sides we find that identical issue came up for consideration before the Tribunal in the case of CCE, Daman/Valsad v.Kayem Synthetics Pvt. Ltd. and Ors. 2003 (90) ECC 699 (Tri) (Final Order No. 468-485/03-NB(A) dt. 13.8.03) in which the Bench upheld the finding of the Commissioner and rejected the appeals of the Revenue.

Relevant paragraph from the Tribunal's order are reproduced below: "4. We find that the Learned Commissioner was fully justified in holding that there is no evidence brought out in the case by the Department to prove any flow back which would justify rejection of the invoice value. The Commissioner has observed that even though there is an allegation that time lag between the clearance date and actual sale is about seven days to one month and on the date of actual sale, the sale price is more than that was shown in the invoice no facts and figures have been furnished to support this allegation. He has further observed that, assuming that sale price at depot was on a higher side, even then there is no justification for taking recourse to Valuation Rules as was proposed in the show cause notice. The Commissioner has correctly held that only in those cases where it can be demonstrated that the provisions of Section 4(l)(a) are inapplicable, recourse to Valuation Rules can be taken as provided under Section 4(l)(b). Learned Commissioner has correctly pointed out that if, according to the Revenue, there is a sale at the depot, sale price at depot could have been ascertained.

Therefore, there is no justification to resort to valuation under Section 4(l)(b) and the Valuation Rules. The Commissioner points out that even though the Department had knowledge about the ultimate actual buyers no effort is seen taken to get information from them as to whether the sale was at a price higher than that was shown in the invoice. According to us the view taken by the Commissioner was correct. So also we find that the adjudicating authority was fully justified in holding that the show cause notice has erred in demand duty on the entire quantity of goods cleared from the factory including quantity sold to the buyers other than Bhiwandi buyers.

5. The Commissioner has further noted that there is no allegation that there is any difference in the figures shown in the sale ledgers as price realised against a particular invoice and the figure shown in the invoice. The only objection was that buyers name was different. So long as the sales realisation was not shown on a higher side than the amount declared in the invoice, there is no basis for the allegation of undervaluation. We are in full agreement with the above view taken by the learned Commissioner in the facts of the case.

6. Remaining question to be considered is whether bank statements given by the assesseees for the purpose of getting credit facility can be relied on as a material to show that the goods were undervalued in the invoice. The contention raised by the Revenue on the bank statement was rejected by the Commissioner relying on two decisions of the Tribunal in Punjab Oil and Silicate Mills v. CCE 1993 (65) ELT 268 and Rishab Refractories Pvt. Ltd. v. CCE, Chandigarh, 7. In Punjab Oil & Silicate Mills 1993 (65) ELT 268, the Department while alleging clandestine manufacture and removal of the goods relied on the figures furnished by the assessee to the Department of Industries or as admitted by the party in their affidavits filed before the Department for getting the coal. The Tribunal took the view that any information obtained from the Department of Industries is not sufficient proof to show that the goods were manufactured unless it was substantiated with other evidence of clandestine removal of the manufactured goods. It was also held that even admission, confession or sworn statement given by the appellants before other authority in different context for different purpose cannot be taken as conclusive proof in the absence of positive evidence adduced by the Department.

At best it may be an inference but not substantial proof. Similar view was taken in Rishab Refractories Pvt. Ltd. 1996 (87) ELT 93. In an earlier decision of this Tribunal in Alwyn Industrial Corporation v. CCE, New Delhi, 1988 (33) ELT 376 the Department sought to place reliance on two letters of State Bank of India informing the excise authorities that the appellant had obtained cash credit limit of Rs. 50,000/-, that loan amount was sanctioned for manufacture of electric wires and cables and as per stock statement received from the appellants manufacturing of cable was done by them. The bank had forwarded 12 stock statements submitted by the assessee. The assessee had denied manufacture of wires and cables. Tribunal took the view that letters received from the bank cannot be relied on to come to the conclusion that the assessee had manufactured wires and cables without any corroborating evidence. In the light of the above authorities we hold that the Commissioner was justified in taking the view that undervaluation cannot be found against the assessee on the basis of bank statements." 4. Following the ratio of the above order which is squarely applicable as the evidence relied upon in that case is identical to the present case, we are of the view that the Commissioner's order does not warrant any interference and accordingly uphold the same and reject the appeals.

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