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Ramkumar Mills Private Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-31-2005

Reported in : (2005)(183)ELT356TriDel

Judge : S Kang, Vice-, a T V.K., N T C.N.B.

Appellant : Ramkumar Mills Private Ltd.

Respondent : C.C.E.

Judgement :

2. The issue involved in these appeals pertains to determination of assessable value of the processed fabrics. The Revenue is of the view that value of pre-shrunk fabrics is required to be taken into consideration to arrive at the assessable value while the assessee is of the view that assessable value of processed fabrics is to be arrived at taking into consideration the shrunk fabrics as emerged after processing.

3. The issue was referred to the Larger Bench in view of the conflicting decision of the Tribunal in the case of Gemini Dyeing & Printing Mills Ltd. v. Commissioner of Central Excise, Bangalore, reported in 1997 (91) E.L.T. 195 (Tribunal) and in the case of Indian Rayon & Indus. Ltd. v. Commissioner of Central Excise, Calcutta-IV, reported in 2002 (150) E.L.T. 388 (Tri.-Kolkata).

4. The contention is that during processing of fabrics, due to shrinkage there is some difference in the length of fabrics, which was received for processing. The

contention is that duty in respect of processed fabrics has to be worked out taking into consideration the shrunk fabrics as emerged after processing along with the cost of job work.

5. On the other hand, the contention of the Revenue is that this issue is now settled by the decision of the Hon'ble Supreme Court in the case of Ujagar by the decision of the Hon'ble Supreme Court in the case of Ujagar Prints, Etc. Etc. v. Union of India And Ors., reported in 1988 (38) E.L.T. 535 (S.C.) and in the clarificatory order in the case of Ujagar Prints Etc. Etc. v. Union of India and Ors., reported in 1989 (39) E.L.T. 493 (S.C.). The contention is that the Tribunal in the case of Indian Rayon and Industries Ltd. C.C.E., Calcutta-IV (Supra) decided the issue in the light of above-mentioned decision of the Hon'ble Supreme Court. The Contention is that Hon'ble Supreme Court in the above decision held that assessable value in respect of processed fabrics would include the value of Grey cloth in the hands of the processor plus the value of job work done plus manufacturing profit and manufacturing expenses. The contention of the Revenue is that as the assessable value of Grey fabrics in the hands of processor is to be taken into consideration, therefore, the value of Grey cloth handed over to the processor has to be taken into consideration for arriving at the assessable value of the processed fabrics and not the length of the processed fabrics.

6. We find that the issue is already settled by the Hon'ble Supreme Court in the case of Ujagar Prints, Etc.Etc. v. Union of India (Supra), the Hon'ble Supreme Court "In the aforesaid view of the law and for the reasons mentioned by my learned brother, I agree with his answer to this contention. The assessable value would, therefore, include the value of the grey-cloth in the hands of the processors plus the value of the job-work done plus manufacturing profits and manufacturing expenses whatever would be included in the price at the factory gate. The correct assessable value must be the value of the fabric at the factory gate, that is to say, the value at which the manufactured goods leave the factory and enter the main stream." 7. Further, the Hon'ble Supreme Court in the clarificatory order in the case of Ujagar Prints Etc. Etc. v. Union of India, reported in 1989 (39) E.L.T 493 (S.C.) held as under: "In respect of the civil miscellaneous petition for clarification of this Court's judgment dated 4th November, 1988, it is made clear that the

assessable value of the processed fabric would be the value of the grey-cloth in the hands of the processor plus the value of the job work done plus manufacturing profit and manufacturing expenses whatever these may be, which will either be included in the price at the factory gate as if the processed fabric was sold by the processed fabric. The factory gate here means the 'deemed' factory gate as if the processed fabric was sold by the processor. In order to explain the position it is made clear by the following illustration; if the value of the grey-cloth in the hands of the processor is Rs.20/- and the value of the job work done is Rs.5/-, then in such a case the value would be Rs.30/-, being the value of the grey-cloth plus the value of the job work done plus manufacturing profit and expenses. That would be the correct assessable-value".

8. The Tribunal in the case of Indian Rayon & Industries Ltd. C.C.E., Calcutta-IV (Supra) decided the issue in favour of the Revenue. After taking into consideration the decision of the Hon'ble Supreme Court in the case of Ujagar Prints v. Union of India and Ors. (Supra) the Tribunal "I do not find any merit in the above contention since the observation of the Supreme Court as quoted above would make it clear that the selling price as declared by the trader would include only the price or deemed price at which the processed fabric would leave the factory plus his profit. Therefore, the price of the fabric at the point of its leaving the processor's factory is a relevant factory. While computing the deemed price at the processor's factory gate the value of the grey clothes handed over to the processor has necessarily to be taken into consideration. This is clear from the illustration given in the reference order and which was again quoted in the clarificatory order of the Supreme Court. If wastage during the process has to be fixed at 5% it requires 100sq. metre of grey fabrics for removing 95 sq. metre of processed grey fabrics at the factory gate. Admittedly, this aspect has not been taken into consideration by the assessee while adopting the assessable value.

On the other hand, it had derived at the assessable value by multiplying the price of processed grey fabrics per metre by the total quantity moving out of the factory after the process.

Therefore, I agree with the view taken by the Member (Technical) that what is relevant for the purpose of duty is the intrinsic value of grey cloth plus the value of job work and manufacturing profits, expenses etc. The assessee will be entitled to abatement on the profit element, if any, of the raw material supplier included in the assessable value"Gemini Dyeing & Printing Mills Ltd. v. CCE, Bangalore, reported in 1997 (91) E.L.T. 195 (Tribunal). In this case the decision of the Hon'ble Supreme Court in the case Ujagar Prints v. Union of India and Ors. is not taken into consideration. In these circumstances as the issue is already settled by the decision of the Hon'ble Supreme Court, therefore, view taken by the Tribunal in the case of Indian Rayon and Industries Ltd. v. CCE, Calcutta-IV (Supra) is approved and the decision taken by the Tribunal in the case of Gemini Dyeing & Printing Mills Ltd. v. CCE, Bangalore (Supra) 10. The issue referred to the Larger Bench accordingly decided in favour of the Revenue.

11. Now, we are taking up the appeals for disposal. In view of the above discussions, we find no merit in the appeals filed by the appellants where they are claiming that value of shrunk fabrics is to be taken into consideration for arriving at assessable value of the processed fabrics. The appellants also submitted that the Adjudicating authority also demanded interest in respect of the confirmed demand under Section 11AB of the Central Excise Act, 1944. The contention of the appellants is that Section 11AB of the C.E.A, 1944 was introduced w.e.f., 11.5.2001. Therefore, the interest under Section 11AB of the C.E.A., 1944 cannot be demanded prior to the date of introduction of the date of Section. We find merit in the arguments. Hence the appellants are liable to pay interest w.e.f. 11.5.2001. Appeals are disposed of as indicated above.

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