

Escorts Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-2005

Reported in : (2005)(101)ECC442

Judge : S Kang, Vice, N T C.N.B.

Appellant : Escorts Limited

Respondent : Cce

Judgement :

1. M/s Excorts Limited, the appellant in these three appeals, is a manufacturer of tractors and motor vehicles. Parts of these items are also manufactured in-house. The common issue that arises in these appeals is the valuation (for assessment to Central Excise duty) of two parts, namely, hydraulic gear and hydraulic distribution assembly manufactured by the appellant and used captively in the production of tractors. Except for the difference in the periods covered in the three appeals, facts and legal position are the same in regard to all the appeals.

2. These appeals are before us on remand by the Hon'ble Supreme Court vide order dated October 25, 2004 in Civil Appeal Nos. 7310-7312 of 2003.

3. We have perused the records and considered the submissions made by both sides.

4. The contention of the Revenue is that parts which are used in in-house production are required to be assessed at the value at which the same parts when

sold are assessed in terms of Section 4(1)(2) of the Central Excise Act. As against this, the appellant has contended that the hydraulic gear and hydraulic distribution assembly that are captively consumed are not identical with those sold and therefore they should be valued separately under Rule 6 of the Central Excise Valuation Rules. It is also being pointed out that the Revenue's contention in the proceedings before the lower authorities was based on Rule 6 (comparable goods) of the Valuation Rules.

5. With regard to the differences in the products, it is being emphasized that the captively consumed goods are not packed in the same way as the parts which are sold in the spare parts market, the difference being that, while the goods cleared as spare parts are packed, the parts cleared for captive consumption are removed from the hydraulic gear and hydraulic distribution assembly Division to the Tractor manufacturing division in a naked condition. Other differences being mentioned are that spare parts are marked and rustproof painted.

It is also being pointed out that the gear pumps are also filed with oil and clamps are fixed on when sold as spare parts.

6. Learned SDR would contend that none of the above differences would make the items captively consumed different goods from those sold as spare parts. It is his submission that hydraulic gear and hydraulic distribution assembly do not change identity based on use, whether as original equipment or spare parts. He would also submit that the differences being pointed out are not in regard to the goods, inasmuch as the hydraulic gear and distribution assembly used for either purpose are identical. It is the learned SDR's contention that the parts used in both the lines emerge from the same manufacturing process and therefore are indistinguishable. It is also his case that the very use as spare parts denotes and establishes complete interchangeability and substitution between the two and therefore the appellant's claim regarding the goods being not identical cannot be countenanced. Learned SDR has submitted that packing, marking, filling with oil etc. are only to make the items ready for post clearance transport, use etc. and these have no bearing on the identity of the goods.

7. We may first go into the three Show Cause Notices to appreciate the submission that Revenue's own case was made in terms of Rule 6 of the Central Excise Valuation Rules. The three notices covering the appeals are as under:

Appeal No.	Show Cause Notice No.	Dt. of	SCNE/1574/93-A	CE-1C/Escorts/90-3471	16.12.91E/1668/94-A	V(87)3/61/92/D-II/9611
			20.11.92E/3180/93-A	V(87)15/129-CE/93/1692	29.4.93	8.

The very first of the notices dated 16.12.91 alleged that "whereas it appears that ...they are selling their goods either to M/s Excorts Limited ... they have contravened the provision of Rule 173F, 173C and 173G read with Section 4(1)(a)(iii) inasmuch as they were required to determine Central Excise duty due on which goods under Rule 173F read with provisions of Section 4(1)(a)(iii) of the Central Excise Act". The notice further alleges that "The said M/s Escorts Ltd. (Hyd. Div.) submitted their P/List Nos. 8/90 dt. 30.11.90 and 9/90 dt. 30.11.90 for the following items: And whereas the said M/s. Escorts Ltd. (Hyd. Div.) have also submitted their price lists for the same goods to be sold through M/s Escorts Ltd. (Spare part Div.) Faridabad at the following rates.

And whereas the Section 4(1)(a)(iii) provides that if the goods are generally not sold by the assessee in wholesale market except or through related persons, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person to independent buyers.

And whereas the said M/s Escorts Ltd. (Hyd. Div.) have sold their goods to M/s Escorts Ltd. (Tractor Div.) at lower price (sic, price) than the prices charged from M/s Escorts Ltd. (spare parts Div.) at which the goods are normally sold to the independent buyers and as such have short paid Rs. 1418537.80 p. (BED Rs. 13,02,589,48 + SED Rs. 1,15,948.32) as per details in Annexure 'A'.

After citing the allegations and facts as above, the notice asked' for showing cause against the following proposal:- "The said M/s Escorts Ltd., (Hyd. Div.) Faridabad are hereby required to show cause to the Assistant Collector, Central Excise Div.-III Faridabad as to why the prices at which M/s. Escorts Ltd., are normally selling the goods to independent buyers should not be treated as normal price and the

Central Excise duty amounting to Rs. 1418537.80p (BED Rs. 13,02,589.48 + SED Rs. 115948.32) including Rs. 120731.00 short paid by them should not be recovered under Section 11A read with Rule 9(1) of Central Excise & Salt Act, 1944 and Central Excise Rules respectively and a penalty should not be imposed under Rule 173Q of Central Excise Rules" Thus, the proposal in this notice was not in terms of Rule 6 of the Valuation Rules. It was specifically in terms of Section 4(1)(2)(iii) (Sale through related person) of the Central Excise Act and the value proposed for assessment was "the prices at which M/s. Escorts Limited are normally selling the goods" (i.e. spare parts market price).

9. The second notice dated 20.11.92 also made the identical proposal.

The proposal read as under: "The said M/s Escorts Ltd., (Hyd. Divn.) Faridabad are hereby required to show-cause to the Dy. Collector, Central Excise, Faridabad as to why the prices at which M/s Escorts Ltd. (Spare parts Div.) are normally selling the goods to independent buyers should not be treated as normal prices for assessment and the Central Excise duty amounting to Rs. 5,64,145 (Five lacs sixty four thousands one hundred & forty five only) including Rs. 12,377 short paid by them should not be recovered under Section 11A of Central Excises & Salt Act, 1944 read with Rule 9(1) of Central Excise Rules, 1944 and a penalty should not be imposed under Rule 173Q of Central Excise Rules, 1944".

"4. On scrutiny, it was revealed that all parts transferred from M/s Escorts Ltd. (TD) Faridabad to M/s Escorts Ltd., Tractor Div., Faridabad were not being used captively by M/s Escorts Ltd., Tractor Division Faridabad as some of the parts were finding their way in the open market as spares & sold through M/s. Escorts Ltd., (Spare Parts Divn.) another sister Division of the same company. Therefore, the wholesale price of these goods which were sold in the market should have been the assessable value of the goods used captively by M/s Escorts Ltd., Tractor Division, Faridabad in terms of Rule 6(b)(i) of Central Excise Valuation Rules, 1975.

5. On being pointed out to the party, the party filed price list in part VI with effect from 12.3.93 amending the earlier approved price list dated 18.11.92 by filing up the proforma 'A' of said price list. Accordingly they started paying Central Excise

duty on the basis of wholesale price for those ... being used captively by M/s Escorts Limited.

Whereas in terms of Rule 6(b)(1) of Central Excises (Valuation) Rules, 1975 read with Section 4 of the Central Excise & Salt Act, 1944 ...assessable value of excisable goods under assessment....Determined under Rule 4 or Rule 5 and where the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf in the production of other articles, the value shall be based on the value of the comparable goods produced or manufactured by the assessee or by any other assessee".

Thus, this notice alone referred to Rule 6(b)(1) of the Central Excise Rules for the differential duty demand on the ground that the goods cleared for captive consumption were comparable to the goods sold in the spare parts market. However, the important thing to be noticed is that, even in this notice, the basis of valuation proposed is the assessable value of the goods sold as spare parts.

11. Equally important is the stand of the appellant in the proceedings.

Reply dated 7.2.92 in regard to the first notice contended as under: "2. That the noticee is selling its goods to OE Customers as well as to wholesalers: One of the OE Customer of the company is M/s Escorts Ltd. (Tractor Division) and one of the wholesale buyers of the goods is M/s Escorts Ltd., (Spare Parts Division). The Tractor Division & Spare Parts Division are separate classes of buyers. The goods sold to Tractor Division are used by it as parts for original equipments manufactured by it, whereas the goods sold to the Spare Parts Division are further sold by it to other customers. For the goods sold to the Tractor Division the company has entered into a contract and the company has sought approval of price lists on the basis of this contract. The Show Cause Notice has been issued without appreciating these facts and therefore merits to be withdrawn.

That under Section 4 of the Central Excises and Salt Act, 1944 there can be separate assessable values for different classes of buyers.

As submitted above the Tractor Division and Spare Parts Department are separate classes of buyers and there exist separate contract.

The price lists filed by the company are correct and there has been no short levy of duty. The Show cause notice as such merits to be withdrawn".

Thus, the appellant's claim to different treatment for the two sets of parts was not based on the claim of products being different but that original equipment (OE) buyer and spare parts buyer were different classes of buyers. However, it would appear from the adjudication order that the issue of the goods being different was raised in the personal hearing. Differences pointed out being with regard to marking, wrapping and packing "to make them fit for marketing". The adjudicating authority rejected this claim regarding goods being different with the following observation: "In this connection I observe that there could not be two RG-1 stage of a final product depending on the buyers. Therefore, RG-1 stage of their final products either should have been in loose and naked condition or in a duly packed condition. Moreover, they have failed to produce any such evidence during the course of proceedings of this case by which it could be shown that they supplied goods to the tractor div. in a loose and naked condition. Therefore, the above contention of the party that value on cost account basis merits to be taken as assessable value under Section 4 of Central Excises & Salt Act, 1944 is not convenience do not accept the same accordingly. However, I further observe that Section 4 of Central Excises & Salt Act, 1944 states that assessable value of the goods shall be the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal where the buyer is not a related person and the price is the sold consideration for the sale.

But as already discussed in the proceeding paragraphs they sold the goods to their related persons and had filed price lists accordingly in part-IV which attracts provisions of Section 4(i)(a)(iii).

Therefore, this contention of the party also is not tenable".

The order concluded with the following direction with regard to assessable value: "In view of the aforesaid discussions and findings I order that normal price of party's final product should be the prices at which M/s Escorts Ltd. (spare parts div.) are normally selling the goods to independent buyers and also confirm the demand of Central Excise duty amounting to Rs. 14,18,537.80 (Rs. 13,02,589.48 BED + Rs. 1,15,948.32 SED) including Rs. 1,20,731.00 short paid by them against the party under Section 11A of Central Excises & Salt Act, 1944 read with Rule 9(i) of Central Excise Rules, 1944".

12. The appellant's position in the reply to the second show cause notice contended that parts cleared for home consumption are cleared in naked and bulk condition and that such parts are further processed, tested etc. The reply also took up the position that "the parts which are sold in the replacement market at the time of clearance of the goods are not identical to those which are supplied to the Tractor Division in naked and bulk condition." The Commissioner rejected the appellant's contention and held that packing, marketing etc are only ancillary and necessary for the transportation and storage of the goods. He noted in particular that in the present case that both types of the goods are same in specification and quality and concluded that the products being comparable and there being no difference in the cost of production and in the two products. The value of the goods sold should be assessable value of the captively consumed goods. The demand was confirmed in terms of Rule 6(a)(i) (value of comparable goods) of the Central Excise Valuation Rules. The claim for any abatement towards cost of packing was rejected with the observation that "the party has not filed any data relating to the cost of packing".

13. The proceedings covered in Appeal No. E/1668/04-A ended with the following observation in the order of the Commissioner (Appeals):- "I have carefully gone through the case and written & oral submissions. I find that the matter has been referred to this forum once again vide earlier Order-in-Appeal, it was remanded to the original authority. Subsequently the merits of the case were thoroughly considered by the Collector Central Excise, Delhi who vide his order-in-original No. 17/93 of 8.4.93 rejected the various contentions of the appellants and held the goods identical to those supplied to their spare part division vis-a-vis open market

while passing the impugned order, the Deputy Collector has referred to the same and also confirmed the demands. Thus the fact of the matter is that there exist 2 orders (one of the Deputy Collector and the other of Collector) holding that the goods involved are identical admitting of no price differentiation between the captively consumed and issued to the wholesale market and that the normal price shall be the correct basis for discharging duty liability on these goods.

It is contended that the appellants have since gone to the Hon'ble CEGAT against Collector Central Excise Delhi's adverse order with no interim relief in their favour.

Against this background, there is no merit in the appellants plea that the instant matter on the analogy of the earlier order he remanded to the Deputy Collector considering that a superior authority has since adjudicated the matter. It is only the period involved which is different in this case.

It is essentially a valuation matter. It is a settled law that different normal prices are admissible in the case of different classes only. Here it will be an act of violence to the meaning of term 'class' inasmuch as class contemplates the existence of more than (sic, than) one. Similarly cost based valuation has to be worked out where identical products are not issued to the wholesale channel. Again, until the stage real sale takes place and the goods enter the stream of whole sale trade, the assessable values cannot be arrived at on the basis of notional prices as reflected in the invoices/challans issued to the subsidiaries/branches/distributors etc.

Therefore, the impugned order is maintainable on law and facts. The appeal is without merit".

14. The above noted facts relating to the history of the dispute make it clear that the Revenue's position, all through, whether made in terms of Section 4(1)(a) or Rule 6(b)(1), was that parts consumed in captive consumption and parts sold to spare parts market were the same and therefore their assessable value should be same i.e. the sale value of the spare parts. The appellant's original stand was that the spare parts market buyer and the captive consumption buyer were different classes of buyers. It, later on, also took an alternative plea that the goods were different.

15. We have already noted, in somewhat detail, the Revenue's reasons for contending that captively consumed parts should be assessed at the value of the goods sold. These being that the goods, though disposed of through two different streams, are manufactured from the same materials in the same manufacturing process, they are of identical specification and are fully interchangeable. Very idea of a spare part is that it substitutes fully. A suggestion that parts used in original equipment and parts used as spare parts are not identical is repugnant to the idea of spare parts. That some of these parts were packed separately or marked differently do not make them different goods. Those processes are merely in the nature of making the goods fit for disposal in a particular stream. They don't change the goods. The findings of the lower authorities to this effect are in conformity, with the method of manufacture and commercial understanding of the goods and cannot be faulted.

16. As already discussed (para 6 to 12), the stand of the Revenue, from the first show cause notice [issued in terms of Section 4(1)(a)] was that the sale price of the spare parts should constitute the assessable value of captively consumed parts. In view of this, we find no inconsistency in the stand of the Revenue.

17. In view of what has been stated above, the appeals fail and are rejected.

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