

**The Commissioner of Central Vs. Success**

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

**Decided On :** Mar-22-2006

**Reported in :** (2006)(109)ECC122

**Judge :** S Peeran, J T T.K.

**Appellant :** The Commissioner of Central

**Respondent :** Success

**Judgement :**

1. This is a Revenue appeal against the OIA No. 47/2003 dated 31.01.2003 setting aside the demands confirmed in OIO No. 22/2001 dated 25.01.2001. The demands were raised for enhancing the assessable value of Polyester Sewing Thread sold by the assessee to their related person without declaring the same during the period April 1999 to March 2000.

2. The assessee had taken the contention that the price at which the goods were sold to the related person was same as sold to independent buyers. There was no under valuation of the price. The Commissioner (Appeals) accepted their pleading after due examination of the evidence on record. The findings recorded in para 4 & 5 are reproduced herein below: 4. At the personal hearing, Sri Anil D. Nair, advocate appeared on behalf of the appellant, and stated that as far as the appellant is concerned, they are selling the goods at the same price both in the open market as well as to M/s. Thread Embayer. This being the case, duty cannot be demanded.

5. The impugned order, the grounds of appeal, submissions made at the time of personal hearing have all been carefully considered by me. The issue to be decided is what would be the assessable value of goods when a major part of the goods sold are to a related person and consequently, whether assessment should be made under Section 4(1)(a)(iii). There is no dispute to the fact that the appellant sells his products at the same rates to other independent buyers, as that to M/s. Thread Embayer. Thus when goods are available for sale to independent buyers at the factory gate, then there exists a normal price for such goods in terms of Section 4(1)(a) of the Central Excise Act, 1944. Whatever the normal price would also be the assessable value of goods for sale to the related person, namely, M/s. Thread Embayer, is the question. It has been held by the Tribunal in the case of Hingorami Air Products v. Collector that even if 80% of the goods are sold through related persons and if the same price is charged to independent buyers then the assessable value for all goods sold, including through related persons has to be at the price available to the independent buyers. Therefore the assessable value of goods even for goods sold through M/s. Thread Embayer has to be that at which the goods are sold to independent buyers. The lower authority fell in error in applying the sale price of M/s. Thread Embayer to be the assessable value of goods sold through them.

3. The learned JDR takes us through the Grounds of Appeal and prays for allowing the appeal on this ground. The Revenue contends that the price sold to the related person cannot be adopted and the price adopted as in the Show Cause Notice should be accepted in terms of OIO. It is also submitted that the Commissioner (Appeals) has not examined the evidence showing clear clandestine and suppressed transaction and realization of sale proceeds in cash and the profits so accrued have been shared by the two parties.

4. The learned Counsel submits that the referred OIO No. 15/2000 dated 20.07.2000 has no bearing to the facts of the present case. The issue in the cited OIO No. 15/2000 pertains to separate and independent clearance and it had no bearing at all with regard to the clearances of sewing thread and the aspect of valuation in the present matter. He submits that the Revenue's appeal in similar case and circumstances in respect of CCE v. Excel Thread Industries has been

dismissed by Final Order No. 327 & 328/2005 dated 21.02.2005 by the Circuit Bench at Cochin.

5. We have carefully considered the submissions and the grounds made by the Revenue. We do not agree with the grounds made in the appeal that the Commissioner (Appeals) should have examined the OIO No. 15/2000 which pertains to separate proceedings of clandestine manufacture and removal of other items. The facts therein are independent of the charge made in the impugned proceedings. The impugned proceedings pertain to valuation of goods sold to related person. The Revenue would have a good case had the assessee not sold the goods at same price to independent persons. There is no charge of receipt of extra consideration in the matter. The findings recorded by the Commissioner (Appeals) is legal and proper. We find that in similar circumstance, the Revenue had filed an appeal against M/s. Excel Thread Industries.

The Circuit Bench at Cochin dismissed the Revenue appeal by Final Order No. 327 & 328/2005 dated 21.02.2005. The findings recorded in the order is reproduced herein below: On hearing both the sides, we note that it is not in dispute that 2% goods are being sold by the Respondents to independent buyers at the same price i.e. Rs. 48/- per box when the goods are available to the independent buyers at Rs. 48/- per box, i.e. normal price of the goods. Therefore the Commissioner (Appeals)'s order holding that even for goods sold to M/s. Golden Threads, the assessable value would be Rs. 48/- per box, cannot be faulted. Accordingly, we uphold the impugned order and reject the appeal.

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