

S. Kumar Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-2007

Judge : N T C.N.B., M Ravindran

Appellant : S. Kumar Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. Duty demands and penalties are in regard to processed yarn cleared by M/s. S. Kumars Ltd. during the period 1999-2000. The appellant was discharging duty liability based on approved price list wherein assessable value was worked out by cost of production method.
2. Under the impugned order, it has been held that assessable value worked out was less than the actual. As a result, a total demand of about Rs. 6.4 crores remains confirmed.
3. The appellant contests the demand on merits as well as on limitation. On merits, the submission is that duty demand has been worked out incorrectly. It is being pointed out that cost revision was made by making additions of certain elements to the originally approved cost of production; but while doing so, cost of conversion remains provided for twice. The submission is that, in the original declaration, provision for conversion was included at the rate of Rs. 4/- PMT etc. The grievance is that when cost was computed afresh, the provision already made should have been deducted to avoid duplication.

The duty demand on this score is stated to be about Rs. 2.2 crores.

Another objection is that interest cost remains included in the assessable value. It is being pointed out that interest cost is not required to be included in determining the cost of production in terms of Para 1.5 of CAS 4. There is also an objection addition made towards over heads (duty demand of about Rs. 115 crores) is not justified.

4. The contention in regard to limitation is that assessments were originally made in terms of approved assessable values and no data filed has been held to be false or omitted with intention to evade the payment of duty. It is being contended that since there was no suppression or misstatement of facts, extended period is not attracted.

There is also a submission that there could be no intention to evade payment of duty on the goods. The submission is that the fabrics were received from S. Kumar Synfab Ltd. and fabrics so supplied belonged to two categories: one, woven by S. Kumar Synfab and the other got woven by other weavers. It is being pointed out that both type of fabrics were valued and assessed at around the same price. The submission is that in a case where the comparable value of a stranger is adopted as the basis for assessment, there could be no intention to evade payment of duty. The duty demand beyond the normal period is Rs. 3.8 crores.

5. The learned Joint CDR has taken us through the impugned order and has contended that since the assessee was not filing actual data about cost of production, authorities were justified in working out the cost in the manner done under the Adjudication order.

6. There is merit in the appellant's contentions. Interest cost is one of the items not includable under the CAS 4 standard. Similarly, from the worksheets, it is seen that conversion cost at varying rates (from Rs. 4/- to Rs. 6/-) was being added in the original cost computation.

Failure to make required adjustment towards this element (while revising the cost) has eased unjustified increase in the demand. There is also prima facie merit in

the submission, that relevant facts were not withheld or misstated with intent to evade payment of duty, during the relevant period Rule 6 of the Valuation Rules specifically provided for assessment based on the value of comparable goods.

7. In view of what is stated above, the stay application is allowed and recovery stayed till disposal of appeal.

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