

Ucal Machine Tools Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Nov-13-2007

Reported in : (2008)(125)ECC92

Judge : P Chacko, K T P.

Appellant : Ucal Machine Tools Ltd.

Respondent : Cce

Judgement :

1. This appeal filed by the assessee is against a demand of differential duty on the goods cleared by them, during October - December 2000 to their holding-company viz. M/s. UCAL Fuel Systems Ltd. The appellants had paid duty on the goods after determining its assessable value under Rule 8 of the Central Excise Valuation Rules, 2000. The department found that the assessable value determined by the assessee at 115% of the cost of production in terms of Rule 8 ibid was lower than the price actually charged to the buyer. Therefore, a show-cause notice was issued to the assessee demanding differential duty on the differential value. This demand was contested. The original authority confirmed the demand and imposed a penalty. The appeal filed by the assessee was rejected by the Commissioner (Appeals). Hence the present appeal.

2. After hearing both sides and considering their submissions, we note that the lower authorities chose to apply Rule 11 of the Valuation Rules to the goods in question. They have adopted the price actually charged to the related buyer as the

basis of the assessable value, holding the view that the agreement between the assessee and the related buyer had a commercial basis and hence the value agreed to was the 'transaction value' to be accepted under Section 4(1)(a) of the Central Excise Act. Learned SDR has reiterated this case of the Revenue. Learned consultant for the assessee has submitted that the Revenue's case is not even supported by the Board's Circular No.354/81/2000-TRU dated 30.6.2000, wherein the concept of transaction value introduced through Section 4(1) of the Central Excise Act was examined and certain clarifications issued. Learned consultant also claims support from the Tribunal's decision in Nirma Ltd. v. CCE, Vadodara 2006 (200) ELT 213 (Tri. - Mumbai), wherein the Board's Circular dated 1.7.2002 was referred to and it was held that, where specific provisions were made, general provisions stood excluded. In the present case, relationship of the assessee to the buyer being an admitted fact, the applicability of transaction value concept to the subject goods under Section 4(1)(a) of the Act is ruled out and the provisions of Section 4(1)(b) of the Act get attracted. The question now to be considered is whether it should be Rule 8 [relied on by the assessee] or Rule 11 [relied on by the lower authorities] which should be applied to the facts of this case. It is not in dispute that the goods in question were sold to a related buyer [holding-company], who captively consumed the goods for further manufacture of excisable goods. A case where the related buyer does not sell the goods but consumes it in the manufacture of other goods is covered by the proviso to Rule 9. This proviso reads as under: Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in Rule 8.

3. By virtue of the above proviso, Rule 8 gets attracted and accordingly the assessable value shall be 115% of the cost of production of the goods. The case is so simple. Admittedly, the appellants paid duty on the above basis. No more duty is recoverable from them.

4. In the result, the impugned order is set aside and this appeal is allowed with consequential reliefs to the appellants.