

(2015) 07 SC CK 0134

In the Supreme Court Of India

Case No : Civil Appeal Nos. 7180-7184 of 2005

Chackolas Spinning and Weaving Mills Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Cochin

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Central Excise (Valuation) Rules, 1975 — Rule 6

Citation : (2015) 51 GST 710

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : M.P. Vinod, for the Appellant; K. Radhakrishna, A.K. Panda, Tara Chandra Sharma, Ritesh Kumar, R.K. Verma and B.K. Prasad, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The only question of law involved in these appeals is as to whether the provision of Rule 6(b)(ii) of the Central Excise (Valuation) Rules, 1975 (hereinafter referred to as "the Valuation Rules") are applicable to the case at hand or not.

2. The facts in brief are as follows:

The Appellant company is engaged in the manufacture of cotton yarn, woven fabrics of cotton, staple fibre yarn and woven fabrics falling under Central Excise tariff headings 5205, 5209, 5510 and 5514 respectively of the Schedule to the Central Excise Tariff Act. The products manufactured by the Appellant are liable to payment of excise duty. The Appellant has filed declaration in this behalf with the excise department. It is the admitted case of the Appellant that the Appellant has been captively using certain counts of yarn produced by them in the manufacture of unprocessed fabrics, which were exempted from the payment of duty. Since the yarn was not sold by the Appellant but was consumed captively in the manufacture of fabrics, the question of valuation thereof arises

while determining the excise duty that was payable on the manufacture of yarn. The Respondent-excise department valued the same by applying the provision of Rule 6(b) (ii) of the Valuation Rules. The relevant provisions of this Rule, as it existed, at the relevant time reads as under:

6(b) where the excisable goods are not sold by the Assessee but are used or consumed by him or on his behalf in the production or manufacture of other articles, the value shall be based-

(i) on the value of comparable goods produced or manufactured by the Assessee or any other Assessee....

(ii) if the value cannot be determined Under Sub-clause (i), on the cost of production or manufacture including profits, if any, which the Assessee would have normally earned on the sale of such goods.

3. As pointed out above, the yarn has been captively consumed by the Appellant. In the production/manufacture of unprocessed fabrics, Rule 6(b)(ii) directly applies to such cases where the excisable goods are not sold but are used or consumed captively. Under Clause (i) of Rule 6(b), the value is to be based on the value of comparable goods produced or manufactured by the Assessee or any other Assessee. Since there was no such commodity or material available to show the value of any chargeable goods, the case was covered Under Sub-rule (ii) of Rule 6(b). That is, thus, the only provision under which the value could be determined. The only statement of the Appellant is that since it was incurring losses in the production of yarn in the previous year it did not include any notional profit while dealing with price of goods Under Rule 6(b)(ii) by the Department. That cannot be accepted inasmuch as Sub-clause (ii) of Rule 6(b) does not deal with the situation where profits should be actually earned which is clear from the language "which the Assessee would have normally earned on the sale of such goods". Thus, the notional profits could be taken into consideration and added while arriving at the value of captive material. This is exactly the exercise that was undertaken by the Department and has been upheld by the CESTAT. We may point out that ten per cent notional profit was added which has been found to be reasonable by the CESTAT relying upon the judgment in Union Carbide India Ltd. Vs. Collector of Central Excise, Calcutta, (2003) ECR 1 : (2003) 158 ELT 15 : (2004) 5 SCC 669 . We thus do not find any error in the impugned order passed by the CESTAT.

4. These appeals, therefore, in our opinion, have no merit and are accordingly dismissed.