

(2008) 08 SC CK 0095

In the Supreme Court Of India

Case No : Civil Appeal No's. 3426-3427 of 2002

Commissioner of Central Excise and Customs

APPELLANT

Vs

MDS Switchgear Ltd.

RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 57I

Central Excises and Salt Act, 1944 — Section 11A, 11A(1), 11AB, 11AC

Citation : (2008) 133 ECC 94 : (2008) 159 ECR 94

Hon'ble Judges : J. M. Panchal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sanjeev K. Bhardwaj, for B. Krishna Prasad, for the Appellant; Jay Savla, for the Respondent

Final Decision : Dismissed

Judgement

1. Revenue is aggrieved against the order passed by the Customs, Excise & Gold (Control) Appellate Tribunal (for short, the Tribunal") whereby and whereunder the Tribunal has reversed the order-in-original passed by the Commissioner of Central Excise holding that the process followed by the Revenue from the issue of show cause notice to the determination of the liability is not based on relevant law.
2. M/s. MDS Switchgear Ltd., D-4, MIDC, Jalgaon (hereinafter referred to as "the assessee") and M/s. MDS Switchgear Ltd., A-2, MIDC, Malegaon Village, Sinnar (hereinafter referred to as "the supplier") are the sister concerns and are engaged in the manufacture of circuit-breakers falling under Chapter Heading No. 85 of Central Excise Tariff Act 1985. They were also availing of MODVAT facility under the Central Excise Rules, 1944 (for short, "the Rules")
3. The assessee was receiving "tripstar MCB"s single pole" of various configurations from their unit at Sinnar in semi-finished condition. After carrying out certain operation, they have cleared the goods at lower value than the landing cost of semi-finished received from their unit, viz., MDS Switchgear,

Malegaon, Sinnar. The Revenue, after a detailed verification of record, came to the conclusion that the cost of semi-finished goods supplied by their sister concern is arrived at by adding the raw material cost, direct/indirect labour cost, average overheads, notional profit and MODVAT element. Further, the cost so arrived is rounded off to the next higher figure, i.e., for item code No. T161B06S, the cost of Rs. 56.68 has been rounded off to Rs. 60/- whereas the assessable value declared by the assessee is ranging between Rs. 45.20 to 52.47.

4. The Revenue issued a show cause notice dated 4.11.1999 to the assessee being of the opinion that they have deliberately entered into practice of raising value of semi-finished goods by adding MODVAT element and rounding off the value to higher figure so as to pass on the excess MODVAT credit. The said notice was, thus, issued to show cause as to why MODVAT credit amounting to Rs. 13,08,701/- should not be disallowed under Rule 57- I of the Rules read with proviso to Section 11A(1) of the Central Excise Act, 1944 and to show cause as to why interest and penalty should not be levied and as to why plant, machinery, building etc. should not be confiscated.

5. By the order-in-original dated 30th October 2000, the Commissioner of Central Excise & Customs, Aurangabad confirmed the demand of Rs. 13,08,701/- u/s 11A of the Act and imposed a penalty equivalent to the amount of duty u/s 11AC of the Act and also a penalty of Rs. 1,00,000/- under Rule 173Q of the Rules. Recovery of interest u/s 11AB of the Act was also ordered.

6. Aggrieved by the above order-in-original, the assessee preferred an appeal before the Tribunal which has been accepted by the impugned order. Revenue, being aggrieved, has filed the present appeal.

7. The Tribunal has come to the conclusion that in fact there was no loss of revenue. It accepted the appeal by recording the following reasons:

Reasons given by the appellants for the alleged inflation of the value of the intermediate goods are logical. What was required of the Commissioner was to examine the quantum of the loading of the assessable value by the modvat credit on the earlier inputs. That exercise has nowhere been done. If the department was of the opinion that the value of the final product was depressed, then they could have charged the Jalgaon unit with under-invoicing of their product. That has also not been done. The valuation as given by the Sinnar unit was duly approved by the department and the payment of duty was also duly accepted. We find absolutely no substance in the attempt of the learned Commissioner to convert a part of the duty so paid into "deposit of duty". There is no legal basis for such presumption. The rules entitled the receipt manufacturer to avail of the benefit of the duty paid by the supplier manufacturer. A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of recipient unit 2000 (38) RLT 179.

8. Counsel appearing for the Revenue could not assail any of the findings

recorded by the Tribunal.

9. That being the position, we agree with the view taken by the Tribunal and find no merit in these appeals which are dismissed leaving the parties to bear their own costs.