
(2015) 04 SC CK 0054

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5007-5024 of 2004 and C.A. Nos. 6032-6036 of 2004

Commissioner of Central Excise

APPELLANT

Vs

Asarwa Mills

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Central Excise (Valuation) Rules, 1975 — Rule 6
Central Excise Rules, 1944 — Rule 173C
Central Excises and Salt Act, 1944 — Section 11A, 11A(1)
Cost Accounting Records (Textile) Rules, 1977 — Rule 11, Rule 13, Rule 7

Citation : (2015) 319 ELT 216 : (2015) 6 SCALE 16

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

Bench : Division Bench

Advocate : K. Radhakrishnan, Senior Advocate, Shreekant N. Terdal, Nisha Bagchi, Subhas Chandra Acharya, Kapil Rastogi, Sanjay Rastogi, B. Krishna Prasad and Pooja Sharma, for the Appellant; Devan Parikh, Sr. Adv., Shyam Divan, Jaydeep Patel, Shilpa Balani, Vishnu S

Final Decision : Dismissed

Judgement

Civil Appeal Nos. 5007-5024 of 2004:

1. The Respondents herein are engaged in the manufacturing of yarn and fabrics. The yarn was captively consumed in the manufacture of fabrics. The Respondent were paying the duty on the yarn at the spindle stage on the basis of cost of construction arrived at under Rule 6(b)(ii) of the Central Excise (Valuation) Rules, 1975. The Department contends that the Respondents had not declared the correct value of the captively consumed yarn during the years 1994-95, 1995-96 and 1996-97 as the value declared was much lower than the value arrived at on the basis of Cost Audit Report furnished by their cost accountants. Thereafter, an investigation was held and it was further observed that the Respondents had not included the value of administrative overheads, bonus, gratuity, interest, conversion charges and depreciation charges in the assessable value of the yarn. Show cause notices were served upon the Respondents in the

year 1999 demanding differential duty along with interest. The notices alleged that there had been duty evasion. The said show cause notices were adjudicated upon by the Commissioner of Central Excise, Ahmedabad, who confirmed the demands and also imposed the penalty on the Respondents. It was held that all the administrative and other overheads along with wrapping, winding, beaming, sizing and dyeing charges were includible in the assessable value. The Commissioner further confirmed the invocation of the extended period of limitation only in respect of the administrative and overhead expenses.

2. Aggrieved, the Respondents preferred appeals before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (hereinafter referred to as "CESTAT"). CESTAT vide its common order dated 13-2-2004 allowed the appeals on the ground that the larger period of limitation was not invocable against the Respondents herein and accordingly set aside the demands of duty on them. It was also held that the cost accountants were the experts authorized by the law to do the costing of production of the goods and their duly certified statements/reports relating to such costing were legally authentic enough to be acted upon by their clients and any error found in such certificates would not be a valid ground for any authority to proceed against the clients criminally or quasi-criminally.

3. From the aforesaid, it is clear that the only issue is as to whether extended period of limitation could be applied in these cases. As pointed out above, the period involved is April, 1994 to September, 1996 whereas show cause notices to all these Respondent-companies were issued sometime in the year 1999 which was much beyond the period of six months stipulated in Section 11A of the Central Excise Act. The Department took the plea that the extended period of limitation contained in the proviso to Sub-section (1) of Section 11A would be applicable because of the reason that there was intentional misstatement or declarations by the Respondent-companies in order to evade taxes. The CESTAT has found it otherwise. Two things which are highlighted by the CESTAT, while accepting the arguments of the Respondents-assessees are the following:

"(1) The declaration which was filed with the Excise Department in the prescribed form and prepared by the cost accountants was keeping in view of the provisions of Rule 173C of Central Excise Rules and as per the said form, the aforesaid cost, viz., cost of labour, bonus, etc., were to be included. Insofar as the declaration which was filed with the Company Affairs Department, cost of bonus, interest, gratuity, etc., were to be included because of the Cost Accounting Records (Textile) Rules, 1977 and particularly Performance C thereof.

(2) There was some misunderstanding about the inclusion of these costs for the purposes of attracting Excise duty, not only with the Respondents-assessees but within the Department as well. Therefore, error if any was clearly bona fide and not with the object of evading Excise duty."

4. After hearing the Counsel for the parties on both sides and going through the

records, we find that the Respondents-assesseees are correct in their submissions on both the counts and the CESTAT has rightly accepted their case.

5. Insofar as the first aspect noted above is concerned, we have been shown the declaration which was given to the Excise Department in the proforma. As per the said proforma, it is only the cost of the goods and conversion charges that had to be stipulated and it was so done. On the other hand, when we examine the relevant provision of Cost Accounting Records (Textile) Rules, 1977, we find that these Rules specifically deal with the inclusion of overheads, yarn/cloth in grey stage for self-consumption, and costs statements which are mentioned in Rule VII, XI and XIII respectively. Insofar as the overheads are concerned, Rule VII stipulates that details of administrative, selling and distribution overheads and the amounts applicable to yarn cloth and processed cloth shall be maintained in such a manner so as to enable the company to fill up the particulars in the cost of production and cost of sale statements of each count of yarn/type of cloth, etc. These are to be in proforma B, C, E, F, L and M specified in Schedule II respectively. Thus, there is a distinction made between the cost of production that has to be given in Proforma B and cost of sale statement as per Proforma C. This becomes further clear when Rule XIII pertaining to cost statements as that also mandates giving the cost statements in Proforma B and C. Perusal of proforma B and C shall reveal a vast difference between the two. As per Proforma B, it is the statement showing the cost of production of yarn count wise for the year ending which is to be shown. Proforma C, on the other hand, relates to cost of yarn sold during the year. Thus, for arriving at cost of yarn sold during the year in the said Proforma, cost of bonus, interest, gratuity is to be included. It would be pertinent to mention here that to arrive at cost of packed yarn, certain statements of costs are mentioned. Therein the cost of bonus, interest and gratuity is not included. It is thereafter only when the cost of sales is computed that bonus, interest and gratuity apart from administrative expenses as well as sales and distribution expenses are added as cost of elements. Therefore, bonus, interest and gratuity are to be added to arrive at cost of sales and not the cost of production. It was because of this Proforma that the Respondents-companies were required to include the cost of bonus, interest and gratuity which otherwise was not of relevance insofar as the matter of Excise is concerned.

6. We also find that earlier there was some ambiguity and it was not clear as to whether cost of labour, bonus, etc., is to be included while arriving at the cost of captive consumption of this item. This was clarified only vide circular dated 30-10-1996 issued by the Central Board of Excise and Customs, New Delhi on the subject of "Assessable Value in the case of goods captively consumed - Addition of Profits -Reg."

7. In para 3 thereof while issuing the clarification as to how the Gross Profit, i.e., profit before depreciation and taxation or "Profit before tax" or any other profit has to be arrived at, it is also clarified that for the purposes of calculation of

value of goods captively consumed under Rule 6(b)(ii) of Central Excise (Valuation) Rules, 1975, certain steps are to be taken. For convenience sake, we will reproduce this portion of the said circular as we are directly concerned therewith:

"It is hereby clarified that for calculation of value of the goods captively consumed under Rule 6(b)(ii) the following steps are to be followed:

(i) The cost of production of the goods has to be determined so as to include inter alia, the cost of material, labour cost and overheads including administrative cost, advertising expenses, depreciation, interest, etc.

(ii) Profit before tax has to be taken from audited balance sheet of the previous year and the profit margin has to be calculated as a percentage of cost of production in the previous year as per the formula prescribed by the Cost Accounts Branch of Department of Expenditure (copy enclosed).

(iii) The profit margin of the previous year as arrived at step (ii) as a percentage of cost of production has to be loaded to the cost of production of the impugned goods derived at (i) above for the current year to arrive at the assessable value of captively consumed goods."

8. The clarification, as noted above, pertains to calculation of value of goods captively consumed under Rule 6(b)(ii). It is this Rule which is undoubtedly applicable in the present case. Thus, for the first time, only in October, 1996, it was clarified that the cost of material, labour cost and overheads including administrative cost, advertising expenses, depreciation, interest, etc., would be included in the cost of production. The period with which we are concerned is prior to October, 1996, i.e., April, 1994 to September, 1996. It, therefore, cannot be said that the Respondents-companies made intentional misdeclaration with the purpose to avoid payment of correct Excise duty. We thus, find that the CESTAT was right in holding that extended period of limitation would not be applicable in the present case.

9. The appeals stand dismissed.

Civil Appeal Nos. 6032-6036 of 2004

The appeals stand dismissed in view of the aforesaid order in Civil Appeal Nos. 5007-5024 of 2004.