

(2015) 03 SC CK 0023

In the Supreme Court Of India

Case No : Civil Appeal No. 7957 of 2003

Hindustan Spinning and Weaving Mills Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Central Excise (Valuation) Rules, 1975 — Rule 6
Central Excises and Salt Act, 1944 — Section 35L, 4, 4(1)

Citation : (2015) 318 ELT 374 : (2015) 31 GSTR 429 : (2015) 4 SCALE 105

Hon'ble Judges : Rohinton Fali Nariman, J.; Arjan Kumar Sikri, J.

Bench : Division Bench

Advocate : P.H. Parekh, Senior Advocate, E.R. Kumar, Vishal Prasad, Utsav Trivedi, Sanjana Ramachandran, Aditya Sharma, Advocates for Parekh and Co., for the Appellant; Yashank Adiyaru, Sr. Adv., Shirin Khajuria, Rajiv Nanda, Ajay Sharma, B.K. Prasad and Anil Kaitya

Final Decision : Allowed

Judgement

Arjan Kumar Sikri, J.—This appeal is preferred by the Appellant/Assessee Under Section 35-L of the Central excise Act, 1944, (hereinafter referred to as "the Act") against the order dated 11.6.2003 passed by the Customs Excise and Gold (Control) Appellate Tribunal, West Zonal Bench at Mumbai (CEGAT).

2. The facts in brief giving rise to the present appeal are as under:

The Appellant has various units and the unit in question which is known as Crown Mills Unit and the dispute pertains to this unit. It manufactures yarn which is mostly captively consumed in the manufacture of different varieties of fabrics and some yarn is sold in the market.

3. In so far as the captive consumption of yarn is concerned, the Appellant has been paying excise duty on the basis of the costs, which according to the Appellant is the cost of production of the yarn. The yarn which is sold in the market, the duty is paid thereon at the factory gate price.

4. The Respondent Department felt that the aforesaid method adopted by the Appellant Assessee in calculating the excise duty and paying the same in respect of the captive consumption was in-appropriate. As per the Department such a duty should have been paid on the same price at which the unit was sold by the Appellant in the market. This resulted in issuance of 20 show cause notices by the Respondents to the Appellant for the period 1.4.1994 to 1.6.1998. The Appellant contested the averments made in the said show cause notices and maintained that the method of calculating the excise duty which was paid by the Appellant in respect of the yarn in captive consumption for long number of years was rightly followed. The aforesaid contention was, however, not accepted by the adjudicating authority and vide order dated 28.2.2002 passed by the Commissioner of Central Excise (Appeals), a demand in the sum of Rs. 39,24,324.29 was raised and confirmed and equal amount of penalty was also imposed.

5. Feeling aggrieved by the said order, the Appellant preferred the appeal before the CEGAT. By the impugned judgment and order CEGAT has affirmed the order of the Commissioner (Appeals), resulting into the dismissal of the appeal in so far as payment of excise duty is concerned. However, in so far as penalty is concerned, the same is reduced to rupees five lakhs thereby giving partial relief in respect of the penalty part of the order.

6. It is not in dispute that the valuation of yarn even in case of captive consumption is governed by Under Section 4(1)(b) of the Act. Section 4 is reproduced below:

Section 4. Valuation of excisable goods for purposes of charging of duty of Excise
-(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall-

(a) In a case where the goods are sold by the Assessee, for delivery at the time and place of the removal, the Assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) In any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

7. As it is clear from the reading of the aforesaid provision, Clause (b) which is attracted in the present case stipulates that in a case like this, the value has to be determined in such a manner as may be prescribed. This manner is prescribed in Rule 6(b)(i) of the Central Excise (Valuation) Rules, 1975 (hereinafter referred as "the Valuation Rules"). For the sake of better understanding Rule 6(b) of the Valuation Rules is also reproduced hereinbelow:

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 the comparable goods produced or manufactured by the Assessee or by any other Assessee:

Provided that in determining the value under this sub-clause, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors and, in particular, the difference, if any, in the material characteristics of the goods to be assessed and of the comparable goods.

(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.

8. A bare reading of Rule 6(b) manifestly points out that in those cases where the excisable goods are not sold by the Assessee but are consumed by Assessee himself, namely, in case of the captive consumption, the value of comparable goods produced or manufactured by the Assessee or by any other Assessee is to be taken into consideration. However, the proviso to this Clause (i) of Sub-rule (b) provides that in determining the value in the aforesaid sub-clause the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors, and in particular, the difference, if any, in the material characteristics of the goods to be assessed and of the comparable goods.

9. Since the Appellant itself is selling same very yarn in the open market, as per the aforesaid provision the said market value would clearly become the value of the comparable goods produced by the Assessee/Appellant itself. To this extent there cannot be any quarrel. The principle to this effect is laid down by this Court in Commissioner of Central Excise, Jaipur Vs. Scan Synthetics Ltd., .

10. However, what is emphasized by Mr. Parekh, learned senior Counsel appearing for the Appellant, is that in terms of the aforesaid proviso the officer was supposed to give adjustment of all relevant factors pointing out the difference between the value of the comparable goods and the value which is to be assigned to the goods meant for captive consumption. In this behalf, he has drawn our attention to the impugned order wherein this very submission was specifically made by the Appellant with the plea that while arriving at the cost of the captive consumption yarn, adjustment for winding, warping, sizing, packing, godown rent and selling cost is to be given. Likewise, it was argued that the expenses of winding and warping, etc. should be included in the value as yarn is clearly for captive consumption before sizing etc. at the spindle stage. This is so specifically noted by the CEGAT in the impugned order as well by pointing out that the Appellant initially declared the value of the manufactured cotton yarn on the basis of the manufacturing cost, the cost of marketable yarn, however, was higher than that. Since this calculating cost of marketable yarn has to undergo the process of wharfing, coning, packing etc, and the goods have to be kept in the B.S.R. therefore, the yarn which was sold differential size duty has been paid on the differential value. Notwithstanding the same, by relying upon the

judgment of this Court in question Indian Oxygen Ltd. Vs. Collector of Central Excise, the Tribunal dismissed the appeal of the Appellant and did not even deal with the aforesaid submission of the Appellant. To this extent contention of Mr. Parekh appears to be justified.

11. We find from the record and particularly the affidavit in rejoinder filed by the Appellant in the present appeal that the process of manufacture is explained by the Appellant in the following manner:

(i) Yarn is spun from fibre on a spinning machine. The yarn is spun onto bobbins, which are placed on the spindles of the spinning machine (ring frame) itself. This is called the spindle stage of yarn. At this stage yarn is completely manufactured.

(ii) The bobbins are removed and weighed. The weight of the bobbins is excluded and excise duty is paid on the net weight of the yarn at this stage itself.

(iii) The bobbins are then removed to the winding department, which is another section. In this section the yarn is wound on cheeses or pirns and the empty bobbins are sent back to the spinning department.

(iv) The yarn that has been wound on cheeses is sent to the warping department. The cheeses are placed on a creel machine and the yarn is wound on warp beams. It is only thereafter, that the yarn is sized and sent to the weaving department.

(v) The yarn that has been wound on pirns is sent to the weaving department for captive consumption to be used for the weft of the fabric.

(vi) If the yarn is meant for sale, it is wound on cones. The yarn may be thereafter sized or unsized depending upon the order. These cones are thereafter packed in polythene bags which are repacked in corrugated boxes, which are tied with plastic straps or packed in hessian bags.

12. It does become apparent that the Appellant is entitled to adjustment of the costs which are incurred in the sale of the same product in the open market as that cannot be included in the cost in respect of yarn which is to be captively consumed.

13. From the aforesaid process explained by the Appellant itself it is clear that up to the stage (iv) above, the process is common in respect of the production of the yarn whether it is to be consumed by the Appellant itself or it is to be sold in the market. It is, thereafter, when it comes to process mentioned at serial Nos. (v) and (vi) above, the same is necessitated for the purpose of sale in the open market and therefore costs incurred while undertaking these processes have to be excluded in arriving at the value at which excise duty is payable for the yarn domestically consumed.

14. Our attention is drawn by the learned Counsel for the Revenue to the Circular No. 258/92/96-CX dated 30.10.1996 issued by the Central Board of Excise and Customs, New Delhi on the subject "Assessable value in the case of goods

captively consumed-Addition of Profit-Reg.

15. In view of the above, it is clear that the Appellant shall be entitled to adjust the cost which is incurred as mentioned in process (v) and (vi) above of the sales in selling costs. Since this benefit is wrongly denied to the Appellant by all the authorities below, for this limited purpose we remand the case back to the adjudicating authority. Before the Adjudicating authority it would be permissible for the Appellant to supply the figures of the cost incurred on the aforesaid processes and after verifying the same himself about the genuineness of such cost incurred, the adjudicating authority shall recalculate the value for the purposes of excise duty while giving adjustment of the aforesaid costs and raise fresh demand on that basis.

16. In the facts of this case, we are of the opinion that no penalty is warranted. Therefore the penalty of rupees five lakhs as ordered by CEGAT is also set aside.

17. During the pendency of this appeal the Appellant had deposited a sum of rupees fifteen lakhs before the adjudicating authority. When the fresh demand is raised in the manner stated above, which exercise should be completed by the adjudicating authority within three months of the date of the receipt of this order, and the fresh figures so arrived at, the adjudicating authority shall be entitled to adjust the same against rupees fifteen lakhs which is deposited by the Appellant. In case the amount so worked out comes to less than rupees fifteen lakhs, balance shall be paid to the Respondent immediately alongwith accrued interest.

18. The appeal is disposed of accordingly.