

Customs, Excise and Gold Tribunal - Calcutta

Strescon Industries Ltd. vs Commr. Of Central Excise on 19 April, 2007

Bench: S T Chittaranjan, D Panda

ORDER D.N. Panda, Member (J)

1. The appellant has challenged order dated 5/11/03 passed by the Ld. Commissioner of Central Excise, Silliguri holding that inclusion of the quantum of Modvat Credit in the assessable value of the goods in which the modvatable input was necessary and Excise Duty of Rs. 52,02,158.00 was leviable under Section 11A(2) of Central Excise Act, 1944 read with Rule 9(2) of the Central Excise Rules, 1944 and penalty of Rs. 1,90,000.00 was imposable under Rule 173Q of Central Excise Rules, 1944.

2. The Ld. Counsel, appearing for the appellant submitted that the input used for manufacture of sleepers were supplied free of cost by Railways. The price of Sleepers was fixed taking into consideration the cost of freely supplied material. Modvat Credit not being part of the cost of the raw material price for the appellant in view of free supply and as per agreement with Railway only the duty suffered on the finished goods was reimbursable by Railway, the quantum of modvat credit of input was not included in the assessable value. Railways being a concern of Govt. of India, there was fair play to reduce the price of the finished goods for supply to them. Modvat Credit was not required to be included in the cost of manufacture. This was done by the appellant following the decision of the Hon'ble Supreme Court in the case of Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd. and also following the Apex Court decision in the case of CCE , Pune v. Kripa Chemicals Pvt. Ltd. reported in 2004 (65) RLT 443 (SC). The Ld. Counsel also relied on the order of this Tribunal in Hindustan Engineering & Industries Ltd. v. CCE, Kolkata-I . According to him the proceeding initiated issuing 15 Show Cause Notices on different dates were contrary to the decision of this Bench of the Tribunal for the conclusion drawn in para 6 of the said reported judgment. He, further, submitted that the very same issue was also decided by the Hon'ble Tribunal against the order of adjudication of the Ld. Commissioner of Central Excise (Appeals), Kolkata vide order No. 1/COL/2002 DT. 26/2/02 allowing appeal of the appellant against order passed by the Ld. Additional Commissioner of Central Excise and Customs, Silliguri. He submitted that the cost of free supply of the material input having been considered to determine the assessable value and duty paid thereon, asking for duty on modvat credit would be double taxation when such modvat credit was not the cost of the input which was a free supply.

3. The Ld. JDR submitted that the order of Denovo Adjudication has considered the decision in the case of Dai Ichi Karkaria Ltd. And the authority found that the facts and circumstances of the case of the appellant is different for which the levy of duty was appropriate holding that the Modvat Credit on the input was includible in the assessable value.

4. Heard both the sides and perused the records. Records reveal that 15 show cause notices were issued on different dates for inclusion of the modvat credit relating to the input in the assessable value of the goods supplied to the Railway Authority who supplied such input free of cost to the appellant. There is no dispute that the appellant was reimbursed to the extent of the duty paid on the finished goods. Input issued free of cost by Railway Authority for manufacture of the finished

goods was included in the assessable value. With an example how the cost of production is computed by a man of commerce was dealt by the Hon'ble Supreme Court in para 24 of the judgment in Collector of Central Excise, Pune Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd. . The said para for convenience of reading is reproduced:

We think it is appropriate that the cost of the excisable product for the purposes of assessment of excise duty under Section 4(1)(b) of the Act read with Rule 6 of the Valuation Rules should be reckoned as it would be reckoned by a man of commerce. We think that such realism must inform the meaning that the Courts give to words of a commercial nature, like cost, which are not defined in the statutes which use them. A man of commerce would, in our view, look at the matter thus: " I paid Rs. 100/-to the seller of the raw material as the price thereof. The seller of the raw material had paid Rs. 10/- as the excise duty thereon. Consequent upon purchasing the raw material and by virtue of the Modvat scheme, I have become entitled to the credit of Rs. 10/- with the excise authorities and can utilize this credit when I pay excise duty on my finished product. The real cost of the raw material (exclusive of freight, insurance and the like) to me is, therefore, Rs. 90/-. In reckoning the cost of the final product I would include Rs. 90/- on this account." This, in real terms, is the cost of the raw material (exclusive of freight, insurance and the like) and it is this, in our view, which should properly be included in computing the cost of the excisable product.

(emphasis supplied) Aforesaid ratio decides the matter in controversy before us.

5. Following the decision in Dai Ichi Karkaria Ltd., the Apex Court in case of CCE, Pune v. Kripa Chemicals Pvt. Ltd. reported in 2004 (65) RLT 443 (SC) has held the same view that Excise Duty paid on raw material as Modvat is not to be included in determining the cost of production of excisable goods.

In view of the settled position of law the issue is no more in res intigra, for which the appellants should succeed in the appeal.

The appeal is allowed, she (sic) stands disposed off.

(Pronounced in the Court on 19/4/07)