

CASE NO.:
Appeal (civil) 4246 of 2002

PETITIONER:
Commissioner of Central Excise, Jaipur

RESPONDENT:
M/s. Scan Synthetics Ltd

DATE OF JUDGMENT: 28/02/2008

BENCH:
ASHOK BHAN & J.M. PANCHAL

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO.4246 OF 2002

ASHOK BHAN, J.

This appeal has been filed by the Revenue under Section 35L(b) of the Central Excise Act, 1944 (for short, 'the Act') against the Final Order No.90/2002-A dated 27th February 2002 in Appeal No.E/881/2001-A passed by the Customs, Excise & Gold (Control) Appellate Tribunal wherein and whereunder the Tribunal has reversed the order-in-original of the Commissioner dated 02nd February 2001 and deciding the issue regarding determination of assessable value against the Revenue in respect of intermediate product, i.e., the textured yarn manufactured and consumed captively by the respondent in the manufacture of final product, i.e., dyed yarn which is sold in the market.

Briefly stated, the facts of the case are :

The respondent-assessee is engaged in the manufacture of textured yarn - grey yarn as well as dyed yarn falling under Chapter 54 of the first schedule to the Central Excise Tariff Act 1985.

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As per Notification No.35/95-E dated 16.3.95, the product dyed yarn was chargeable to 'NIL' rate of duty, if the same was manufactured out of duty paid yarn. Subsequently, Notification No.34/97-E dated 6.6.97 was issued wherein it was provided that the dyed yarn would be chargeable to Basic Excise Duty (BED) and Additional Excise Duty (AED), if the same was manufactured out of duty paid yarn.

According to the Revenue the grey textured yarn is used captively in the manufacture of dyed yarn and the assessee had undervalued the price of the grey textured yarn by deducting certain amount claimed to be the dyeing charges from the price of the textured dyed yarn in order to evade payment of duty.

Hence, A special audit of the records of the assessee pertaining to the financial years 1994-95, 1995-96, 1996-97 and 1997-98 under Section 14A of the Act was carried out for determining the value of the grey yarn in terms of Rule 6(b)(ii) of the Central Excise (Valuation) Rules 1975 ['the Rules']. As per the cost audit report, assessee had misdeclared the value of the goods in question and inflated the dyeing cost during the relevant period. Resultantly, show cause notice dated 23rd February 2002 was issued to the assessee to show cause as to why an amount of Rs.1,00,87,271/- (Rs.87,71,865/- as BED and Rs.13,15,406/- as AED) towards short payment of duty be not recovered under the provisions of sub-rule (2) of Rule 9 of Central Excise Rules, 1944 read with Section 11A of the Act.

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The adjudicating authority, by the order in original dated 02nd February 2001 confirmed the demand. Aggrieved against the said order, the respondent filed an appeal before the Tribunal which was accepted by the impugned order.

The Tribunal, by the impugned order, has held that the assessee was selling a considerable portion of the product in question to independent purchasers at the factory gate. The price charged by the assessee from the independent purchasers/unrelated wholesale purchasers at the factory gate would be the normal price of the grey yarn captively consumed by the assessee on the basis of which assessable value of the product in question could be arrived at.

According to the assessee, apart from procuring the grey textured yarn from the open market, the assessee is also engaged in the manufacture of grey textured yarn itself and is using it in the manufacture of its finished product, viz., dyed yarn. It is also selling a portion of the grey textured yarn to unrelated buyers in the open market at the factory gate. According to the assessee since normal price in terms of Section 4(1)(a) of the Act was available in the form of sale at the factory gate, the price of the goods consumed captively had to be based on the sale price of the goods to unrelated buyers at the factory gate.

The question in the present case is whether the assessee had undervalued the textured yarn consumed captively in the manufacture of dyed yarn.

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The assessable value of the captively consumed grey yarn would be on the basis of the price at which the grey yarn was sold by the assessee to unrelated buyers in wholesale at the factory gate. The assessee had produced a number of invoices showing the sale to such independent buyers.

Counsel for the Revenue has not been able to point out any material on the record to come to a conclusion other than the one arrived at by the Tribunal. The finding recorded by the Tribunal is a finding of fact which cannot be interfered with.

The appeal is accordingly dismissed. No costs.