

CASE NO.:
Appeal (civil) 2560 of 2005

PETITIONER:
Siddartha Tubes Ltd.

RESPONDENT:
Commissioner of Central Excise, Indore (MP)

DATE OF JUDGMENT: 16/12/2005

BENCH:
Ashok Bhan & S.H. Kapadia

JUDGMENT:
JUDGMENT

KAPADIA, J.

This civil appeal under section 35-L (b) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") is a sequel to civil appeal nos.4247-4248 of 2000, hence, it is not required to restate the facts of the case.

In this civil appeal, a short question which arises for determination is - whether the department was right in including the cost of sockets and the value of service charges in the assessable value of m.s./g.i. pipes.

The appellant herein had filed its price lists under rule 173-C in the form of part-II in respect of m.s./g.i. pipes for approval with the department, in which it claimed deduction towards service charges and cost of sockets from the assessable value of m.s./g.i. pipes. According to the department, the sockets fitted to the pipes were the essential parts of the pipes; they enabled the functioning of pipes and in absence of the sockets, the said m.s./g.i. pipes could not be said to have been completed as the sockets were the essential parts for joining the pipes to each other. According to the department, service charges were not deductible from the assessable value of the pipes, as the said charges were paid by the assessee to Madhya Pradesh Laghu Udhog Nigam Ltd. for procuring orders/payments from various departments of the state government and that the matter was squarely covered by the decision of this court in the case of Coromandel Fertilisers Ltd. v. Union of India & Ors., reported in (1984) 17 ELT 607.

According to the appellant, sockets were bought out duty paid items. They were independent excisable goods answering different tariff classification contained in the schedule to the Tariff Act. According to the appellant, the sockets were not manufactured by them. According to the appellant, the sockets were duty paid accessories. According to the appellant, the sockets were not components of m.s./g.i. pipes. According to the appellant, the activity of fitting a socket on one end of the pipe has not been mentioned in the note to chapter 73. It is also not mentioned in the section note under which chapter 73 falls and, therefore, the cost of the sockets was not includible in the assessable value of m.s./g.i. pipes. As regards the service charges, the appellant submitted that the said charges were not connected to the manufacture of m.s./g.i. pipes; that, the service charges were paid to the Madhya Pradesh Laghu Udhog Nigam Ltd. when goods were supplied to various departments of the state government and since the charges were incurred by the assessee beyond the point of clearance, the said charges were not includible in the assessable value of the pipes. According to the appellant, these charges did not contribute to the character of the goods in question. They were like inspection charges or storage charges and, therefore, they were not includible in the assessable value of the pipes.

We do not find any merit in the above arguments advanced on behalf of the appellant. The essential basis of valuation under section 4 of the Act is the wholesale cash price charged by the appellant. Normal price under section 4(1)(a) constituted a measure for levy of excise duty. In the present case, we are concerned with assessment and not with classification. Duty under section 4 was not leviable on the "conceptual value" but on the normal price charged or chargeable by the assessee. [See: Union of India & Ors v. Bombay Tyre International Ltd., reported in AIR (1984) SC 420]

On facts of this case, the adjudicating authority has found that pipes were cleared from the place of removal (factory gate) with the sockets fitted thereto. Further, the appellant had charged its customers for the said sockets. It is true that in the present case, the sockets were bought by the appellant from the market before they were fitted to the said m.s./g.i. pipes. However, the appellant had cleared the pipes fitted with the sockets and it had charged its customers for the pipes fitted with the sockets and, therefore, the department was right in loading the price of the pipes with the cost of the sockets.

In the case of Hindustan Polymers v. C.C.E., reported in (1989) 43 ELT 165, this court has held that under section 4, the normal price for which the goods were sold at the factory gate shall be taken as the assessable value and if a manufacturer levied a charge for an item (socket in this case), which was intrinsically necessary to place the pipes on the market then the cost of such an item had to be loaded to the normal price of the pipes.

Applying the above tests to the facts of the present case, we find, as stated above, that the sockets were fitted on the said m.s./g.i. pipes before their clearance. It has been concurrently found by the commissioner as well as by the tribunal that the sockets were fitted on the threaded portion of the pipes. It has been found that the said sockets enabled the functioning of the pipes. It is found that the sockets were essential for functioning of the pipes. They were required for joining the pipes to each other. In the circumstances, the functional test stood fully satisfied in this case and consequently, the cost of the said sockets was includible in the assessable value of the said m.s./g.i. pipes. On behalf of the appellant, it has been contended that the test of essentiality is not the correct test. We do not find any merit in this argument. We have applied the test of essentiality in several cases, particularly in order to distinguish a component from accessory. (See: Commissioner of Central Excise v. Akay Cosmetics Pvt. Ltd., reported in (2005) 182 ELT 294 para 45. According to Chambers Science & Technology Dictionary, "socket" is defined as a pipe end enlarged to pass over a same-sized pipe to make a joint. Therefore, sockets not only contributed to the functioning of the pipes, it constituted a part of m.s./g.i. pipes. As stated, the customer was charged with the price of the socket when the appellant sold the m.s./g.i. pipes with the sockets. Hence, the department was right in including the cost of the sockets in the assessable value of m.s./g.i. pipes.

Similarly, on the question of service charges incurred by the appellant, we find that the said charges were includible in the assessable value because they were not in the nature of trade discount. Deduction of service charges of the nature indicated in this case does not fall within the deductions contemplated by section 4(4)(d)(ii). They are not in the nature of trade discount. A trade discount is admissible as deduction only if the discount is given to a consumer or the trader. In the present case, service charges were paid to a selling agent for services rendered by Madhya Pradesh Laghu Udhog Nigam Ltd. In the circumstances, service charges were includible in the assessable value of m.s./g.i. pipes. This point is squarely covered by the judgment of this court in the case of Coromandel Fertilisers Ltd., (supra). In the circumstances, the department was right in including the said service charges in the assessable value of m.s./g.i. pipes.

Before concluding, we may point out that the sockets in question were bought out items, as held by the commissioner. The cost of the sockets was

includible in the assessable value and, therefore, the appellant was entitled to take modvat credit on the duty paid on the sockets, subject to the appellant's producing duty paid documents to the department within eight weeks from the date of receipt of the judgment. In fact, directions to that effect have been given by the tribunal in the impugned judgment.

In the result, there is no merit in this civil appeal and the same is accordingly dismissed, with no order as to costs.

JUDIS