

COMMISSIONER OF CENTRAL EXCISE, JAIPUR

v.

M/S. RAJASTHAN SPG. & WVG. MILLS LTD., ETC. ETC.

NOVEMBER 28, 2007

[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Central Excise (Valuation) Rules, 1975:

rr. 6(b)(i), (ii) and 7—Assessable value—Computation of—Textile manufactured at weaving Unit—Processed at process house on job work basis—Unsorted goods received from processing house—Manufacturer then carrying out work of sorting and thereafter goods cleared through Depot—Revenue claiming differential duty on the ground that agreement of lease for processing was a sham in order to change the basis of valuation/assessment of fabric processed, from “comparable goods basis/method” to “cost method”—Tribunal holding the lease agreement as genuine and manufacturer right in invoking cost method under r. 6(b)(ii)—Held: Value of sorted goods cleared at the Depot would be different from value of unsorted goods (semi-finished goods) cleared at factory gate—Thus there was “value addition” and taking this into account, proportionate actual realization on sale of graded fabrics would be more than what is calculated by Revenue—Different methods have to converge to a common valuation—The aspect of convergence is significant—It is not possible to accept wide variation in the result—Revenue may apply different methods of valuation, but it has to ultimately ascertain by applying rule of convergence the estimated ad valorem value which would constitute the basis of assessable value—There is no reason to interfere with judgment of Tribunal.

A *Ujagar Prints & Ors. v. Union of India & Ors.*, [1989] 3 SCC 531, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 735-744 of 2002.

B From the final Order No. 134-43/2001-A dated 4.4.2001 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No.E/489-498/2000-A.

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C C.A. Nos. 8671-8672/2002 and 2624/2003.

R.G. Padia, T.V. Ratnam, B.K. Prasad and Lalit Srivastava for the Appellant.

D Lakshmi Kumaran, Alok Yadav, V. Balachandran, Rajesh Kumar and M.P. Devnath, for the Respondents.

The following Order of the Court was delivered

O R D E R

E 1. This batch of civil appeals filed by the Department is directed against the judgment and order dated 4th April, 2001 passed by CEGAT, New Delhi in appeal No.E/489-498/2000-A.

F 2. The main issue which arose for determination before the tribunal was whether Rajasthan Spinning and Weaving Mills Ltd. (RSWML) was the real manufacturer who carried out textile processing from its process house at Mordī and if so whether the Department was right in invoking best judgment assessment in terms of Rule 7 of Central Excise (Valuation) Rules, 1975 (1975 Rules for short).

G 3. RSWML are the manufacturers of yarn and fabric. It had set up a process house at Mordī in 1994-95. The process house was set up for processing their fabric. The woven fabrics manufactured at their weaving unit was processed on job work basis by Mordī processing house. This

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was with effect from 29th March, 1995. On 16th June, 1995 the said process house was let out by RSWML to Bhilwara Spinners Limited (BSL). Later on the lease agreement between RSWML and BSL stood terminated and the process house was leased out to Purvi Fabrics & Textures (PFTL).

4. The above arrangement was doubted by the Department. Therefore, the Department issued show cause notice dated 22nd September, 1998 claiming differential duty from RSWML for the period from 16th June, 1995 to February 20, 1996 principally on the ground that the real manufacturer was RSWML and that the above arrangement of lease was a sham as it was arrived at to change the basis of valuation/assessment of fabrics processed from "comparable goods basis/method" to "cost method".

5. On factual analysis the tribunal came to the conclusion that the lease agreement referred to above was genuine and, therefore, RSWML was right in invoking the cost method under Rule 6(b)(ii) of the said 1975 Rules. According to the tribunal the present case stood covered by the judgment of this Court in the case of *Ujagar Prints & Ors. v. Union of India & Ors.*, [1989] 3 SCC 531.

6. At the outset we may point out that the question of valuation was not examined by the tribunal. Even if we are to proceed on the assumption that the tribunal had erred, we are still not inclined to interfere in this matter for the reasons given hereinafter mentioned. We are, therefore, proceeding on the basis that RSWML is the real manufacturer and that the lease was a sham.

7. The question which would still arise, whether even if one is required to proceed on the basis of "comparable goods method" is there a case of undervaluation. Is the matter revenue neutral? In this connection, we may point out that the "comparable goods method" is contemplated by Rule 6(b)(i) whereas the "cost method" is contemplated by Rule 6(b)(ii). In this case even if we are to proceed under Rule 6(b)(i), as contended by the Department, we find from the facts that RSWML used to receive

A unsorted fabrics from its process house, RSWML thereafter used to carry
out the work of sorting and thereafter the goods were cleared through
their Depot. Under Section 4(1)(a) of the Central Excise Act as it stood
at the relevant time, in case of valuation falling under Section 4(1), the
normal price constituted the basis of assessable value. We quote
B hereinbelow Section 4(1)(a):

C “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 value, such
value, shall, subject to the other provisions of this section, be
deemed to be –

D (a) the normal price thereof, that is to say, the price at which *such*
goods are ordinarily sold by the assessee to a buyer in the course
of wholesale trade for delivery at the *time and place of removal*,
where the buyer is not a related person and the price is the sole
consideration for the sale :”

E 8. In the present case we are proceeding on the basis that ex-factory
price was ascertainable. Even then, the underlined words indicate that if
sale price of sorted goods at the Depot of RSWML is to be taken into
account the value of such goods (sorted goods) cleared at the depot
would be different from the value of unsorted goods (semi-finished goods)
cleared at the factory gate. According to the Department ex-factory price
was required to be taken into account. However, the Department has lost
F sight of the fact that there was dissimilarity of the goods cleared at the
factory gate, being unsorted goods, on the one hand and the goods cleared
at the Sales Depot of RSWML being sorted goods. If this difference is
kept in mind then there was what is called as “value addition”. That value
G addition has not been taken into account by the Department. For that value
addition abatement was claimed by the assessee. There is no discussion
on this aspect of the case in the order passed by the Commissioner. In
that connection we quote hereinbelow a complete table submitted by
RSWML before the Commissioner which reads as under:

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“Even if the value is determined on comparable goods basis, A
there would be no differential duty liability at all. This is evident
from the following:

	Qty (mtrs)	Value (Rs.)	
Assessable value as per 52A Invoices from process house for the period 16.6.95 to 20.2.98	17004521	105,53,29,128	B
Add: excise duty paid		16,20,17,071	
Total cum duty value	17004521	121,73,46,199	
Add 40% towards value addition between lump and graded fabric		48,69,38,480	C
Expected sale price of processed fabrics - graded	17004521	170,42,84,679	
Proportionate actual realization on sale of graded fabrics as per commercial invoices	17004521	167,35,65,236”	D

9. If one analysis the above table it is clear that if one has to work out the assessable value on “comparable goods method” under Rule 6(b)(i), there has been, according to the assessee, value addition between lump fabric and graded fabric. If that value addition is taken into account then the *proportionate actual realization on sale of graded fabrics* would come to Rs.167,35,65,236 crores which is the value which is more than what is calculated by the Department. In other words the assessee claimed 40% abatement. The Commissioner has given discounts but not abatement. The two concepts are different. The concept of abatement arises on account of the condition of the goods cleared at the factory gate which is materially different from the condition of the goods cleared from the Sales Depot. E
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10. This matter was adjourned by this Court on 31st October, 2007. Adequate time was given to the Commissioner to ascertain whether RSWML was entitled to abatement of 40% on account of value addition. This has not been done. Moreover, as stated above, the question of abatement was raised before the Commissioner by the assessee. That question was never decided. In the circumstances, we see no reason to H

A interfere with the impugned judgment of the tribunal.

11. Before concluding, we may state that valuation is not an exact science. Some amount of guess work exists in valuation. Therefore, different methods are prescribed by Valuation Rules. These rules are prescribed in order to find out the actual realization which realization constitutes the basis of assessable value. At the same time one must keep in mind that different methods prescribed have to converge to a common valuation. For example, as stated above, Rule 6(b)(i) prescribes “comparable goods method”, Rule 6(b)(ii) prescribes “cost method” and Rule 7 which contemplates best judgment assessment states that the Assessing Officer is free to apply any of the methods prescribed by Rules 1 to 6 of 1975 Rules. We would like to, therefore, emphasize the aspect of convergence. It is not possible to accept wide variation in the result. The Department may apply different methods of valuation, but it has to ultimately ascertain by applying rule of convergence the estimated ad valorem value which would constitute the basis of assessable value.

12. For aforesaid reasons, we see no merit in these civil appeals filed by the Department and the same are accordingly dismissed with no order as to costs.

E R.P.

Appeals dismissed.