CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/148/2009-DB

[Arising out of Order-in-Appeal No. 23/2009 dated 09/01/2009 passed by Commissioner of Central Excise (Appeals), Mangalore]

M/s MYSORE POLYMERS& RUBBER PRODUCTS PVT LTD
20-P, KRS ROAD, METAGALLI POST, MYSORE

Appellant(s)

Versus

C.C.,C.E.& S.T-MYSORE
S1-S2...VINAYA MARGA,
SIDDHARTHA NAGAR,
MYSORE
KARNATAKA
570011

Respondent(s)

Appearance:

Mr. Ravi Raghavan, Advocate
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE - 560 055
KARNATAKA

For the Appellant

Mr. K. Murali, Superintendent (AR) For the Respondent

Date of Hearing: 19/07/2019
Date of Decision:27/09/2019

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No.20846/2019

Per : P. ANJANI KUMAR

The Appellants, M/S. Mysore Polymers & Rubber Products Pvt. Ltd, are engaged in manufacturing automotive tubes on job work conversion basis for M/s CEAT and M/s Good Year. The appellants were providing periodical costing details of the inputs supplied for manufacture of tubes, for a particular period, subsequent to the completion of the period; and were adopting this costing value for future clearances. The appellants submitted to the authorities that the assessments of M/s CEAT were provisional; they were not in a position to indicate value at the time of clearances and that appellant's clearances to M/s CEAT also be provisionally assessed. The department alleges that they should gave adopted the same retrospectively and thus continuously undervalued their clearances from 2003. The department issued a Show Cause Notice dated 14.05.2007, covering a period 01.04.2003 to 30.06.2006. Additional Commissioner, vide Order-in-Original No. 12/2007 dated 04.12.2007, confirmed a demand of Rs.41, 35,951. On an appeal filed by the appellants, Commissioner (Appeals), vide Order-in-Appeal No. 23/2009 dated 09.01.2009, confirmed the demand along with interest, for the normal period, while holding that extended period cannot be invoked in the case as the appellants were in continuous correspondence with the authorities requesting them for provisionally assessing the clearances as they are not in a position to indicate exact prices at the time of removal as per the agreement. Appellants filed appeal No E/148/2009 against the OIO. Department also filed a n appeal E/355/2009 against the dropping of demand for extended period. However, this appeal was withdrawn in terms of National Litigation Policy.

2. Learned Counsel for the appellants submits that the assessable value was arrived at on the basis of the costing details/price, consisting of price of raw material, conversion charges and profit, Appellants received a revised declaration from M/s CEAT on 27.9.2005, effective from 1.9.2005; as the goods were already cleared they adopted the value for future clearances effective from 1.10.2005. The appellants have been requesting the department over the years for provisional assessment. The appellants filed a refund claim dated 30.9.2004 on the ground of excess payment duty as per revised cost of production. The same was rejected. Later, on the basis of an audit objection, the present proceedings were initiated.

2.1. Learned Counsel for the appellants submits that the Commissioner, Appeals held that they have correctly followed the procedure as per Board Circular No. 619/10/2002-CX dated 19.02.2002; however, they should have followed the same from the actual date of application of the price list and not prospectively; the circular was in respect of sale of music CDs and holds that as net sales value and total royalty payable for the current year will not be available with the music company, duty should be determined on the basis of figures for the previous year; they have paid duty correctly as the circular as the exact values were given by their principals at a later date only. Due to this method, they have paid excess duty of Rs.31, 40,594 in respect of clearances to M/s Good Year while they short paid Rs.8, 17,860 in respect of M/s CEAT. Even after adjusting, an amount of Rs.23, 22,734 is due to be refunded by them. Honorable Supreme Court in the case of *Divya Enterprises Ltd 2003 (153) ELT 497 (SC)* accepted such adjustment. Tribunal followed the ratio in *Vinir Engineering Pvt Ltd 2004(168) ELT 34(Tri-Bang)* in other cases. He also placed Reliance on the following decisions:

(i). *Essar Steel India Ltd vs. CCE, Raipur 2016-TIOL-2752-CESTAT-DEL*

(ii). Jindal Steel and Power Ltd vs. CCE 2016-TIOL-3079-CESTAT-DEL

Tilrode Chem Pvt. Ltd. vs. CCE Bangalore - 2011 (264) E.L.T. 306 (Tri. - Bang.) further affirmed by Hon'ble High court of Karnataka - Commissioner vs. Tilrode Chem Pvt. Ltd. - 2015 (317) E.L.T. A190 (Kar.)

(iv). ubiliant Organosys Ltd. vs. Commissioner - 2015 (38) S.T.R. 1230 (Tribunal)

2.2. Learned Counsel for the appellants further submits that they are manufacturing an intermediate product which is further used by their suppliers in the manufacture of final products and thus, relying on following cases they are not liable to pay any duty.

(v*). Orissa Industries Ltd 2007(220) ELT 236 (Tri-kolkata)*

(vi). Lawkim Ltd 2007(218)ELT142(Tri-Mumbai)

3. Shri Murali Kanipakam, AR appearing for the department on the other hand submits that the appellant after job work clears the finished automotive tubes on payment of duty by adopting cost construction method; the appellant has re-determined the value of job worked goods (final products) cleared earlier, on costing basis and adopted the same prospectively though the same are applicable retrospectively resulting in under valuation; in one of the costings received on 27.09.2005 the effective date is 01.09.2005, therefore the assessee should have retrospectively applied said rates with effect from 01.09.2005. However, the said costing is applied with effect from 01.10.2005. The appellant's contention, that in some cases where the price shall come down, there would be excess payment and in cases where price goes up, there would be short payment of duty, is not acceptable; law does not provide for such adjustment. He submits that assessable value not liable to revision after clearance of goods from factory; assessee had paid excise duty on the transaction value as declared in the invoice at the time of sale/clearance of finished goods from factory; subsequently, due to revision in price by the principal manufacturer, the assessee wants to reduce the price or increase the price as applicable in respect of goods which were already cleared on payment of duty; there is no provision in Central Excise Act, 1944 and the Rules made there under for price reduction after clearance of goods from factory; the provision available in Central Excise Act, 1944 and the Rules made there under is only for issuance of 'supplementary invoice' for upward revision of transaction value/ sale price.

3.1. Placing reliance on various cases learned AR submits as follows:

(i). Tribunal in the case of Indo Hacks Ltd. Vs CCE, Hyderabad 1986 (25) E.L.T. 69 (Tribunal) held as under:

22. We have also carefully considered the Appellant's submission that in so far as production and clearance pertaining to the year 1978-79 are concerned, they should get the benefit of the Resolution of the Board of Directors dated 2-2-1979, which revised the value of the goods after they had already been cleared from the factory. We agree with the Collector that once the correct assessable value has been declared by the assessee and the goods cleared from the factory, any subsequent reduction in prices to boost the sale of goods, cannot be a matter of concern for the Central Excise in determining the correct assessable value or even for determining the valuation for purposes of claiming exemption.

(ii). Apex Court in the case of *MRF 1997 (92) E.L.T. 309 (S.C.)* held that fluctuation in prices subsequent to clearances of goods not to effect liability to the Excise duty. Apex Court further, in the case of *SAIL CCE , Raipur 2015 (326) E.L.T. 450 (S.C.)* held that the principle laid down in MRF Ltd. would continue to prevail.

(iii). Tribunal in the case of *Finolex Cables Ltd Vs CCE, Pune-I 2011 (270) ELT 81 (Tn. - Mumbai)* held that

5.2. In the present case it is a clear and simple case of price reduction after clearance of goods from the factory. It is not a case of any discount being given to the customers, which was made known to all the customers beforehand. As per Rule 7 of the Valuation Rules, 2000 as it stood at the relevant point, of time, when the goods are cleared to depot on stock-transfer basis from where the goods are ordinarily sold, for the purpose of discharging duty liability at the time of removal of goods from the factory, the price prevalent at the same time or at the nearest point of time at the depot should be ascertained and on that price duty liability has to be discharged. In the instant case, the appellant-assessee has discharged duty liability accordingly. Subsequent change in prices effected by the appellant at the depot does not, affect the assessable value already determined and on which duty liability has been discharged. If that is allowed, the very object and purpose of Rule 7 of the Central Excise Valuation Rules will be totally defeated.

(iv). Tribunal in the case of *CCE, Paipur Vs Blastech (India) Pvt. Ltd. 2011 (274) E.L.T. 210 (Tri. - Del.)* held that Law requires that duty should be paid based on price disclosed in invoice issued at the time of clearance of goods; mere understanding between parties about price variation on lower side after clearance of goods accompanied by invoices, can be of no help to assessee to justify refund claim.

4. Heard both sides and perused the records of the case. The brief issue to be decided in the case is whether the assessment practice followed by the appellant in respect of goods manufactured by them and supply to M/s CEAT & M/s Goodyear. The appellants contend that they would not be aware at the time of clearance of goods, the actual value of the goods as their suppliers either M/s CEAT & M/s Goodyear themselves are under provisional assessment and would be intimating them the actual prices after the finalization of their accounts. Therefore, they started the practice of taking that value as a base value for future consignments. They further submit that in the bargain, they end up paying more at times and paying less at times and therefore, no demand can be made out of the practice as they are eligible for a net refund in fact. They sought to rely on a Circular issued by CBEC No. 619/10/2002 dated 19.02.2002. On going through the Circular, it is seen that the Circular is in respect of Music CD manufacture who are required to include the royalty payable on the quantum of sales.

5. Vide above Circular, CBEC clarified in Para 7 as follows:

7. "For this it will be necessary for the music company to supply to the job-worker the data relating to royalty payment and the wholesale price of each CD, the cost of the inlay cards, jacket, jewel box and other material supplied free of cost. Since net sales value and total royalty payment for the current year will not be available with the music company, duty should be determined on the basis of figures for the previous year. Till the figures for the previous year are provided assessments should be done provisionally. Assessments should be finalized immediately after the figures for the previous year as remade available."

6. It can be seen that the Circular though provides for finalization of values at a later date, essentially suggests provisional assessment in such cases. The appellants contend that they have approached the jurisdictional authorities for provisional assessment on a regular basis over the years. However, their request was not exceeded to by the authorities. Whatever be the Department's reason for not accepting provisional assessment, the ratio of the Circular would not be applicable to the appellants. It can be seen that Learned Commissioner (Appeals) has gone into the aspect of limitation and has given suitable relief to the appellants on the count that they have kept the Department informed and requested for provisional assessment from time to time. Commissioner (A) has confirmed the demand only for the normal period. We are of the opinion that as the assessments were not provisional, the Department was not barred from issuing a demand for normal period. Consequentially, we hold that the Circular is not applicable to the instant case and the demand is sustainable for the normal period.

7. The appellants have also pleaded that there are instances where the appellants have paid duty in excess and in some cases, the duty was short paid. They request that Department should adjust the duty paid and payable. We are afraid, as submitted by the Learned AR for the Department, there is no such provision under the scheme of Central Excise Act, 1944 and Rules made thereunder. It was open to the appellant to claim refund by following the due process of law. Having not done the same, the appellants cannot seek such an adjustment at a later date. We find that the case laws submitted by the Learned AR affirms our opinion. We find that as held by Tribunal in the case of *Finolex Cables Ltd Vs CCE, Pune-I 2011 (270) ELT 81 (Tn. - Mumbai)*, subsequent change in prices effected by the appellant at the depot does not, affect the assessable value already determined and on which duty liability has been discharged. The appellants argued that no duty can be leviable on intermediate product. We find that case laws cited by the appellants is not applicable to the facts of the case and therefore no reliance can be placed on them. In the instant case, the goods manufactured by the appellants are not intermediate goods as discussed in the above cases. On the issue of adjustment of duty excess paid and short paid, we find that as there is no such provision in law, we cannot extend any such relief.

8. In view of the above, we find no reasons to interfere with the order of the Learned Commissioner (A). Accordingly, the appeal filed by the appellants is rejected. We hold that the Department as a case on merits and the appellants are liable to pay duty for the normal period. We remand the case to the Original Authority to compute the demand for normal period which shall be paid by the appellants.

(Order was pronounced
in Open Court on **27/09/2019**)

S.S GARG
JUDICIAL MEMBER

P.ANJANI KUMAR
TECHNICAL MEMBER

Pak/PK...