

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: E/1143/2010

[Arising out of Order-in-Appeal No: SB(32)32/MV/2010 dated 23rd March 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Golden Tobacco Limited

... Appellant

versus

Commissioner of Central Excise
Mumbai – I

...Respondent

Appearance:

Shri Gajendra Jain, Advocate for appellant

Shri Sanjay Hasija, Superintendent (AR) for respondent

CORAM:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

Date of hearing: 30/07/2018

Date of decision: 29/08/2018

ORDER NO: A/87196 / 2018

Per: C J Mathew

Appeal of M/s Golden Tobacco Limited (formerly known as GTC Industries Limited) lies against order-in-appeal no. SB(32)32/MV/2010 dated 23rd March 2010 of Commissioner of

Central Excise (Appeals), Mumbai Zone – I, in which the ‘shells’, ‘cut labels’ and ‘printed sheets’ captively consumed were subject to proceedings on the valuation adopted by following the cost construction basis. The notice pertained to the period from April 1997 to September 1997 for recovery of differential duty of ₹ 6,16,254/- and for the period from September 1997 to March 1998 for recovery of differential duty of ₹ 6,47,923/- by addition of notional margin of profit of 10% and these were confirmed. In the first round of litigation, following the decision of the Tribunal in order no. A/12/WZB/205/CI dated 4th January 2005, the matter was carried by Revenue to the Hon’ble Supreme Court, who, directing attention to the decision in *West Coast Paper Mills Ltd v. Commissioner of Central Excise [1996 (81) ELT 403 (Tribunal)]*, referred the matter back to the Tribunal, which, in turn, remanded the matter back to the original authority to reconsider the contention of the appellant. The demand was confirmed in the second round of proceedings without imposition of penalty and the appeal against the recovery was upheld by the impugned order leading to the present appeal.

2. Learned Counsel for appellant contends that the expression ‘if any’ in rule 6(b)(ii) of Central Excise (Valuation) Rules, 1975, implies that the profit margin was to be added only if circumstances so warranted. According to him, the decision in *re West Coast Paper*

Mills Ltd did not apply in their case owing to special circumstances in which the loss was incurred by M/s West Coast Paper Mills Ltd. On the contrary, it is his contention that the decision of the Larger Bench of the Tribunal in *Raymond Ltd v. Commissioner of Central Excise, Aurangabad [2001 (129) ELT 860 (T-LB)]* effectively sustains their claim.

3. The Hon'ble Supreme Court, in dealing with an appeal against that decision, has held that the notional profit of 10% was to be added in the event of failure on the part of the assessee to establish that a lower notion of profit should be adopted. Citing the decision of the Hon'ble Supreme Court in *PCC Pole Factory v. Collector of Central Excise [2003 158) ELT 429 (SC)]*, he submits that the *ratio* of that decision is in their favour as the absence of sale was held to be a disqualification for enhancement by addition of the notional profit. Further reliance was placed in the decision of the Tribunal in *Crompton Greaves Ltd v. Commissioner of Central Excise, Chandigarh [2002 (139) ELT 101 (Tri.-Del.)]* wherein it was specifically held that addition of notional profit in assessable value is not permissible when the assessee's manufacturing activity is in loss.

4. Learned Authorised Representative, on the other hand, places reliance on the decision of the Hon'ble Supreme Court in *Chackolas Spinning and Weaving Mills Ltd v. Commissioner of Central Excise,*

Cochin [2015 (322) ELT 167 (SC)].

5. The decision of Hon'ble Supreme Court in *re Chackolas Spinning and Weaving Mills Ltd*, wherein the challenge of the assessee relied upon the losses incurred in the production of yarn which was used in the manufacture of unprocessed fabrics; the reasonableness of 10% as notional profit relied upon the decision of the Hon'ble Supreme Court in *Union Carbide India Ltd v. Commissioner of Central Excise, Calcutta [2003 (158) ELT 15 (SC)]*. In the said order, the decision of the Tribunal to adopt a notional cost of production was disapproved off by the Hon'ble Supreme Court on the ground that the scope for adoption of notional value, insofar as rule 6(b)(ii) of Central Excise (Valuation) Rules is concerned, is limited to profit element and not to the cost of production. In *re West Coast paper Mills Ltd*, the issue before the Tribunal was the scope for addition of profit when such was not prescribed absolutely in rule 6(b) of Central Excise (Valuation) Rules, 1975 where the episodal sustaining of loss was held to be irrelevant for the purpose of determining the notional profit.

6. On a consideration of the issues at hand, it would appear that the valuation to be adopted for such captive consumption poses problems which led to the incorporation, within the rules, of a notional profit on the cost of production. Therefore, irrespective of

whether the goods are sold or used entirely for captive consumption, it is not just the cost of production but the profits that would have been earned had the goods been sold outside that was required to be included for the purpose of assessment of duty. The reliance placed by Learned Counsel on the decision in *re Raymond Ltd* enables the appropriate notional profit to be included subject to production of evidence that the amounts so computable was less than the 10% that is normally to be adopted. In *re Crompton Greaves Limited*, the factual determination of the profit element based on relevant data was emphasized upon. The contention of Learned Counsel is that they had been making loss; it would appear that this loss pertained to the sale of the finished products, viz., cigarettes. On the other hand, the exercise was to determine the assessable value of inputs used in the manufacture of cigarettes in the form in which it is finally presented for sale. The goods being entirely consumed within the factory does not have a comparison basis with sales made by the appellant or, by anybody else, of like goods. At the same time, the appellant is unable to show that the assessable value adopted by the lower authorities does not reflect the cost of production and the profit that might have been earned even if these goods have been sold by the assessee or purchased by the assessee from outside. A loss on the product that is cleared finally using the impugned goods as an input is not relevant for determining the notional profit envisaged in rule 6(b)(ii) of Central

Excise (Valuation) Rules, 1975.

7. In view of the above, we find no merit in the appeal before us and consequently dismiss the same.

(Pronounced in Court on 29/08/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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