

आयकर अपीलीय अधिकरण, “ए” न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘A’ BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.2617/Chny/2017
निर्धारण वर्ष/Assessment Year:1999-2000

The Deputy Commissioner of
Income Tax, Corporate Circle 2(2),
Room No. 512, 5th Floor, Wanaparthy
Block, 121, M.G. Road, Chennai 34.

M/s. India Piston Ltd.,
Vs. Huzur Gardens, Sembiam,
Chennai 600 011.

[PAN: AAACI1439E]

(Appellant)

(Respondent)

अपीलार्थी की ओर से / Appellant by : Shri AR. V. Sreenivasan, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri R.Vijayaraghavan, Advocate
सुनवाई की तारीख/ Date of hearing : 25.07.2018
घोषणा की तारीख /Date of Pronouncement : 12.10.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 6, Chennai dated 23.08.2017 relevant to the assessment year 1999-2000. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) erred in deleting the addition made towards the element of excise duty and customs duty in the closing stock.

2. The appeal filed by the Revenue is delayed by two days, for which, the Revenue has filed petition for condonation of the delay, to which; the Id.

Counsel for the assessee has not raised any serious objection. Consequently, the delay of two days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed its return of income for the assessment year 1999-2000 on 31.12.1999 declaring total loss of ₹.4,29,09,590/- under normal computation and deemed income of ₹.1,17,53,361/- under section 115JA of the Income Tax Act, 1961 ["Act" in short]. The Assessing Officer completed the assessment under section 143(3) r.w.s. 147 of the Act by determining the taxable income of the assessee at ₹.1,22,63,672/- after making various additions/disallowances.

4. With regard to the issue of addition of customs duty and excise duty in closing stock, the contingent liabilities of excise duty on finished stocks which were not cleared out the excise bonded warehouse of the company and the contingent liability of customs duty payable on raw materials, stores and spares which were cleared from bonded warehouse for consumption both of which were shown as estimated excise duty and customs duty liabilities by way of notes under balance sheet. The contingent liability was not debited to profit and loss account. Since the customs duty and excise duty are includible in closing stock in view of the decision in the case of CIT v. British Paints Ltd. 188 ITR 44 (SC), the Assessing Officer made the addition of ₹.1,17,43,000/- and brought to tax.

5. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions and by following the decision in the case of CIT v. English Electrical Co. Ltd. 243 ITR 512 (Mad) and other decisions of the Tribunal the Id. CIT(A) deleted the addition and allowed the ground raised by the assessee.

6. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR submitted that the addition was erroneously deleted without appreciating the fact that the excise duty being statutory liability accrued as soon as the manufacture is over and is to be included in the closing stock valuation of finished goods and moreover, the customs duty accrued as soon as the goods enter into the Indian territorial waters and is to be included in the closing stock valuation as the assessee is following mercantile systems of accounting and pleaded that the order of the Id. CIT(A) should be reversed.

7. Per contra, the Id. Counsel for the assessee has submitted that issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in assessee's own case in T.C.,.A. No. 461 of 2004 dated 01.12.2009 and prayed that the order of the Id. CIT(A) should be sustained.

8. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. We have also perused the

copy of judgement of the Hon'ble Jurisdictional High Court in assessee's own case filed by the assessee, wherein, the issue involved in this appeal was subject matter in appeal and the Hon'ble High Court has observed as under:

“4. We have heard the argument of the learned counsel appearing for the assessee as well as the revenue and perused the materials available on record.

5. Upon hearing the counsel and on perusing the materials available on record, we are of the view that both the issue is covered by the decision of this Court. The facts are not disputed that the imported materials are not cleared by the assessee and are kept in the bonded warehouse. Likewise, the manufactured goods are also not cleared from the factory of the assessee and it is still available in the factory.

6. In the above said circumstances of the case, in order to value the closing stock, whether the customs duty payable on the raw materials imported, which is still not cleared from the customs frontier and the excise duty payable on the goods not cleared from the factory and when the taxable event is yet to come, whether the excise duty can be included in the valuation is the point that arises for consideration.

7. The issue came up before this Court in the case of Commissioner of Income Tax vs. English Electric Co. Of India Ltd., reported in 243 ITR 512, wherein, this Court while rejecting the submission of the learned counsel for the revenue held that the liability for payment of excise duty arises at the point of manufacture and, therefore, that liability goes to increase the value of stock awaiting sale. By observing that the argument proceeded on a misconception held that the stock which the assessee has at the end of the financial year is required to be valued at cost meaning thereby all the costs incurred by the assessee for the purpose of manufacturing the goods including the overheads or at market price at the option of the assessee; that the liability for payment of excise duty is incurred by the assessee when the process of manufacture was complete in relation to that excisable item; that liability of the assessee was a liability that was shown in the excise duty account maintained by the assessee, all payments and liability so incurred towards such duty are being exhibited separately as amounts paid as excise duty or as liability incurred for payment of excise duty.

The Court further observed that if the argument of the revenue was accepted, the result would be anomalous, that the liability for payment of duty would then be regarded as part of the assets held by the assessee in the form of the higher value assigned to the closing stock; that the liability cannot be converted into an asset in that manner. The same analogy would equally applicable to the customs duty payable in respect of the goods which are under bond.

8. *The learned counsel appearing for the revenue sought to distinguish the Judgment by placing reliance on the Judgment of this Court in the case of Southern Asbestos Cement Limited vs. Commissioner of Income Tax reported in 259 ITR 631 to contend that the cost of imported raw material of the assessee would necessarily include the customs duty paid thereon, as without the payment of such duty, the assessee would not be entitled to remove the imported raw material from the ports. On payment of such duty, it necessarily constituted a part of the cost of the raw material to the assessee. The value of that imported raw material would not undergo any change depending on whether it is used up in the course of manufacture, or is stored in the godown to be used at a future point of time in the course of manufacture. The value of the imported raw material was, therefore, required to be shown uniformly when it was used up in the process of manufacture as also when it was required to be valued as part of the closing stock by including the customs duty component. We find there is a material difference between the Southern Asbestos case with which reliance has been made by the learned counsel for the revenue and the present case. In that Southern Asbestos's case, the assessee has imported asbestos fibre and cleared the goods from the customs authority on payment of customs duty. So the cost of asbestos fibre was directed to include the customs duty paid and the other expenses incurred to bring the goods to the factory of the assessee. There is also a factual statement available in the Southern Asbestos's case to the effect that the assessee claimed revenue deduction for excise duty paid on the cost of the finished products after paying duty and removing the same from its godown and moving it to other places of storage, on the ground that until sales are effected, excise duty paid should be regarded as a separate item, and the amount of duty paid thereon is to be deducted from the value of the closing stock of those finished products. Hence, reliance placed on the decision reported in 259 ITR 631, in our view is misplaced reliance as the facts are different, in the sense in the Southern Asbestos's case the goods are imported, customs duty paid and goods are available with the assessee. In respect of manufactured goods, the goods are manufactured and cleared from the*

factory by paying the excise duty. But, here in the case on hand, the imported goods are yet to be cleared from the customs and they still remain in the bonded warehouse and the manufactured goods are also very much available within the assessee's factory and it is not cleared by payment of excise duty. Hence, the said different factor make an ocean of difference with the Southern Asbestos's case. But the facts are identical with that of English Electric Co.'s case. Hence the first issue is answered in favour of the assessee.

The Id. DR could not controvert the above findings of the Hon'ble Jurisdictional High Court, in which, the decision in the case of CIT v. English Electrical Co. Ltd. (supra) has been followed by the Hon'ble High Court as well as by the Id. CIT(A). Thus, we find no reason to interfere with the order passed by the Id. CIT(A) on this issue and accordingly, the ground raised by the Revenue stands dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 12th October, 2018 at Chennai.

Sd/-
(A.MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 12.10.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.