

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 5278-5282 OF 2001

Commissioner of Central Excise, Hyderabad
Appella
nt(s)

Appella

Versus

M/s. Novapan Industries Ltd.
Respond
ent(s)

Respond

(With appl(s) for stay and with office report)

Date: 11/01/2007 This/these matter(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. K.Radhakrishnan, Sr. Adv.
Mrs. Binu Tamta, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent(s)

Mr. U.A. Rana, Adv.
Ms. Srabonee Roy, Adv.
Mr. S. Chakraborty, Adv. for
M/s. Gagrat & Co.

UPON hearing counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order with no order as to
costs.

(J.S. Rawat)
gh)

(Kanwal Sin

AR-cum-PS
er

Court Mast

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Commissioner of Central Excise, Hyderabad

Appellant(s)

Versus

M/s. Novapan Industries Ltd.

Respondent(s)

O R D E R

This set of appeals has been filed by the Revenue under Section 35 L(b) of the Central Excise Salt Act, 1944 [for short "the Act"] against the final order Nos. 843-847/2000 in Appeal Nos. E/988-990/99 and E/991-992/99 dated 21st June, 2000 passed by the Customs, Excise and gold (control) Appellate Tribunal, South Zonal Bench, Chennai [for short "the Tribunal"].

The point in issue is, as to whether the amount of interest on receivables is deductible from the assessable value where such interest is inbuilt in the price and is not charged separately.

The Assessee, namely, M/s. Novapan Industries Ltd., the respondent herein, is engaged in the manufacture of "melamine based particle boards and plain particle boards" falling under Chapter 44 of the Central Excise Tariff Act, 1985.

While filing the price declaration, the Respondent opted for provisional assessment and claimed interest on receivables as an abatement on the basis of the decision of this Court in Government of India & Ors. v. Madras Rubber Factory Ltd. & Ors. [(1986) Supp. SCC 751].

The Assistant Collector issued a show cause notice dated 20/24/01/1991, demanding differential duty of Rs.10,71,712.40 under Basic Excise Duty (BED) and Rs.32,327.95 under Special Excise Duty (SED) during the period from 01.03.1987 to 30th June, 1989. The show cause notice was issued on the basis that the Department had contested the MRF judgment and the Supreme Court admitted the Review Petition and recalled the judgment and order for fresh consideration. The respondent was therefore required to show-cause why the quantum on account of interest on receivables and interest on finished goods should not be levied on the respondent. A second show cause notice was issued on 4th September, 1996 on the similar lines for the period from 1st March, 1987 to November, 1995.

The Authority-in-Original rejected the claims and affirmed the demand as per the show cause notices.

In the subsequent judgment in MRF Case passed in the Review Petition reported in [(1995)4 SCC 349], this Court reaffirmed its original decision reported in [(1986) Supp. 751].

In appeal, as in the meantime the judgment in Review Petition had been delivered by this Court, the Commissioner set aside the order in original and remanded the case to the Authority-in-Original for a fresh decision in accordance with law.

On remand, the Authority-in-Original reiterated its earlier findings and held that the judgment of this Court in MRF case was distinguishable

on facts and was not applicable to the present case.

The respondent being aggrieved filed an appeal before the Commissioner of Appeals which was accepted and the Order-in-Original was set aside, against which the Revenue filed the appeals before the Tribunal which have been dismissed by the impugned order.

In our view, the point in issue is squarely covered by the judgment of this Court in MRF Case [1986 Suppl. SCC 751] read with the subsequent order passed in the Review Petition reported in [(1995) 4 SCC 349].

The Tribunal in its order has relied upon its earlier judgment in ICI India Ltd. v. CCE, Hyderabad [2000(91)ECR 152(T)] in which the similar issue was involved and the Tribunal had taken the view that interest being inbuilt in the price which had not been charged separately, was deductible from the assessable value. The portion of the said judgment is extracted below:

"..... The facts recorded by the Hon'ble Supreme Court clearly show therefore that interest element was inbuilt in the price and that this price with the interest element inbuilt was under consideration by the Apex Court. When these facts under consideration by the Hon'ble Apex Court are read with the final judgement in the recalled order as in 1995(77) ELT 433 (para-66) = 1995(58) ECR 385(SC), it is clear that it was held by the Hon'ble Apex Court that such a deduction was admissible under the Act.

9. We find that as against this the Ld. Commissioner (Appeals) has recorded that this element when inbuilt in the price and claimed as a deduction to be in the nature of an abatement and as therefore concluded that such a claim for abatement was not considered by the Hon'ble Supreme Court in the MRF case supra. We find that this conclusion is erroneous and has perhaps reached without reading the para-16 of the original judgement of the Supreme Court and para-66 of the judgment on recall of the Supreme Court noted above. We have already held that such an inbuilt cost on this account of interest on sundry debtors was clearly considered as deductible by

the Apex Court in the issue. Therefore, we find that on this aspect alone, the order-in-appeal is not a fully speaking order."

Counsel for the Revenue fairly concedes that the Department did not file an appeal against the decision of the Tribunal in ICI India's case (supra). Thus, the same has attained finality.

In view of a catena of decisions of this Court, it is settled law that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases. [See: Birla Corporation Ltd. v. CCE [2005(186)ELT 266(SC)], Jayaswals Neco Ltd. v. CCE, Nagpur [2006(195)ELT 142(SC)] etc.]

The point in issue being concluded by the decision of this Court in MRF case (supra) and the fact that the Revenue did not file an appeal against the order of the Tribunal in ICI India case (supra), we do not find any merit in these appeals and dismiss the same with no order as to costs.

.....J.

.....
(ASHOK BHAN)

New Delhi;
.....J.
January 11, 2007
PANTA)

.....
(LOKESHWAR SINGH