

2013 (1) ECS (78) (Tri-Ahd)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD

COURT NO-II

CCE Ahmedabad

Versus

M/s Mahendra Petrochemicals Ltd.

Appeal No. E/187, 190 & 191/06

Arising out of OIA No. 261 to 263/ 2006 (Had-II)CE/Raju/Comr (A), dated 18.08.06

Passed by the Commissioner of Central Excise (Appeals), Ahmedabad

Appellant (s) : CCE Ahmedabad

Represented by : Shri S.K. Mall, A.R

Respondent (s) : M/s Mahendra Petrochemicals Ltd.

Represented by : None

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Hon'ble Mr. B.S.V. Murthy, Member (Technical)

Date of hearing : 25.07.12

Date of decision:25.07.12

ORDER NO. A/1107-09/WZB/HAD/2012

“We find that the ratio laid down by the Hon’ble High Court covers the issue in as much as the additional duties of excise (textile and textile articles) Act, 1978 talks about leviability of additional duties of excise as a percentage or excise duty calculated and levied. In this case in hand, though the goods which are captively consumed are exempted in Notification No. 67/95 the excise duty portion for the

discharge of additional duty of excise could have been notionally calculated as has been held by the Hon'ble High Court in the case of Indo Farm Tractors & Motors Ltd. (supra).” [Para 6]

Per : Mr M.V. Ravindran:

- 1 This appeal is filed by the Revenue against order in appeal No. 261 to 263 / 2006 (Ahd-II) CE / Raju / Comr (A), dated 18.08.06 vide which the first appellate authority has upheld the adjudicating authority's order which has held that the respondent herein is not liable to pay additional excise duty leviable under Additional Duties of Excise (textile and textile articles) Act, 1978.
- 2 For coming to such a conclusion both the lower authorities have relied upon the decision of the Tribunal in the case of Raymond Ltd. – 2005 (192) ELT 868.
- 3 Respondent is absent despite notice. During the last date of hearing on 30.03.12, specific notice was sent to the respondent intimating them that the matter will be taken for disposal and its hearing is adjourned as a last chance. Despite that none represents for the respondent.
- 4 Id. DR would take us through the entire order in original and order in appeal and submit that the issue involved in this case is now squarely settled by the Hon'ble High Court of Himachal Pradesh in the case of Indo Farm Tractors & Motors Ltd. – 2008 (222) ELT 184 (H.P.). It is his submission that the Hon'ble High Court has held that Education Cess which is levied as percentage of excise duty can be calculated irrespective of the fact whether the excise duty payable on such goods exempted.
- 5 We have considered the submissions made by the Id. DR and perused the records. The first appellate authority while holding that the respondent is not liable to pay the additional duties of excise under the ADE (textile and textile articles) Act only on the ground that the Tribunal in the case of Raymond Ltd. has held that once duty liability payable under Section 195 is nil, ADE has to be nil. We find that the Hon'ble High Court of Himachal Pradesh in the case of Indo Farm Tractors & Motors Ltd. was considering identical issue in respect of discharge of Education Cess by the assessee wherein Education Cess is to be calculated as a percentage of excise duty levied and collected. We find that paragraph 17 in the case of Indo Farm Tractor & Motors Ltd, the Hon'ble High Court has held as under:

“17. The contention of the petitioner that the Education cess is levied a 25 of the aggregate of the duties and since the petitioner has been exempted from paying excise duty, this 2% cess cannot be calculated, is not tenable. The excise duty can always be calculated. This cess has to be collected in terms of the Finance Act.”

- 6 We find that the ratio laid down by the Hon’ble High Court covers the issue in as much as the additional duties of excise (textile and textile articles) Act, 1978 talks about leviability of additional duties of excise as a percentage or excise duty calculated and levied. In this case in hand, though the goods which are captively consumed are exempted in Notification No. 67/95 the excise duty portion for the discharge of additional duty of excise could have been notionally calculated as has been held by the Hon’ble High Court in the case of Indo Farm Tractors & Motors Ltd. (supra).
- 7 In view of the foregoing, we are of the view that the impugned order is liable to be set aside and is set aside and all these three appeals are allowed.

(Dictated and pronounced in the Court)