

Collector of Central Excise Vs. Tafe Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-27-1997

Reported in : (1997)(93)ELT34TriDel

Appellant : Collector of Central Excise

Respondent : Tafe Limited

Judgement :

1. This is a department appeal against the order of Collector (A), Madras dated 16-1-1987.
2. Ld. DR drew attention to the order of Collector (A) and the grounds of appeal mentioned in the appeal memo filed by the department.
3. He further stated that the respondents were manufacturers of tractors. They had obtained certain tractor parts under notification 167/79 (as amended) by 249/82 by filing the Chapter X procedure.
4. On verification it was observed that they had diverted certain portion of these goods for spares market and lab test on payment of duty under Rule 196A(i). While doing so they had adopted the value shown in AR3(A) i.e. the value as given by the manufacturer as assessable value.
5. It was the department's contention that it was wrong on their part to do so and they should have worked out the assessable value taking into account the price at which the goods were sold by them and removed from their factory. In this

connection, he would like to draw attention to Section 4 of the Act which places emphasis on the normal price at which goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal; hence the assessable value of the quantity diverted was required to be determined with reference to the price at which the respondents had sold such goods. And therefore, the order of the A.C. confirming the demand of differential duty issued on this basis was required to be confirmed and the Collector (Appeals) had erred in setting aside this order.

6. The Ld. Collector (Appeals) had relied upon a decision of his predecessor in order-in-appeal no. 416/83 but that decision is not a judgment in rem and that decision is not binding when a fresh case involving the party had arisen.

7. The Ld. Advocate stated that he would like to draw attention towards the operative part of the order of Collector (Appeals). It was his submission that the A.C. was bound by the earlier order of the Collector (Appeals) in case of the same appellant on the same issue and therefore, a contrary decision by him was bad in law as rightly held by the Collector (Appeals).

8. Furthermore, the Collector is even otherwise right in setting aside the order of the A.C. as the assessable value is required to be determined at the time of clearance of the goods from the manufacturer's premises and indicated in the AR 3. In this connection, he would like to rely on the Tribunal's order in the case of H.M.T. Limited reported in 1990 (45) E.L.T. 579 (Tribunal).

9. We have considered the above submissions. We find that valuation of excisable goods for the purposes of charging of duty of excise is required to be determined in accordance with Section 4 of the Act and subject to the other provisions of this section, the assessable value of the excisable goods is deemed to be "the normal price thereof, that is to say, that price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal and it has already been held in the case of H.M.T. Limited that it is the value declared by the manufacturer of the goods that forms the basis for assessment and not the price at which the goods are subsequently sold by a purchaser.

10. This observation was made in a case in which a question had arisen relating to the value of the goods obtained under Rule 196A and later disposed of. The bench had in this connection relied on the ratio of the judgments in the case of Tata Engineering and Locomotives Ltd. (order no. 251/89-A, dated 3-7-1989) and M/s. Ashok Leyland Ltd. (order no. 767-768/86-B1, dated 19-12-1986).

11. We are of the view that the ratio of the Tribunal's order in the case of H.M.T. Ltd. applies to the present case also. Hence, respectfully following the same, we dismiss the department's appeal.

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