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Collector of Central Excise Vs. Daurala Sugar Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-31-1997

Reported in : (1997)LC463Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Daurala Sugar Works

Judgement :

1. Collector of Central Excise, Meerut passed an order-in-original No.1/95 confirming the demand of Rs. 9,36,241 /50 under Section 11A of the Central Excises Act, 1944 (for short, the Act). Collector (Appeals), having confirmed this order, the Department has filed the present appeal.

2. Respondent is engaged In the manufacture of sugar, molasses being a by-product. The dispute in this appeal relates to the period March, 1994 and April, 1994. The period in question was governed by order issued by the U.P. State Government under the provisions of the Uttar Pradesh Sheera Niyantran Adhiniyam 1964 (Act 24 of 1964), directing the sugar mills to sell 65% of the molasses produced as per the prescribed quota at the price of Rs. 32.00 per quintal and allowing the sugar mills to sell the remaining 35% in open market. The respondent used 35% of the molasses captively for manufacture of other products on the strength of gate passes declaring the value under Rule 6(b)(i) of the Central Excise (Valuation) Rules, 1975, adopting the value as Rs. 32.00 per quintal. Notice dated 7-9-1994 was issued to the respondent stating that another producer of molasses had sold free quota molasses at Rs. 245.00 per quintal and

respondent should also pay excise duty on the free quota at the same value. Differential duty on this basis was calculated and proposed to be demanded. Respondent resisted the notice contending that according to Rule 6(b)(i) of the Rules, value should be the value at which the respondent has sold the goods and respondent had sold at Rs. 32.00 per quintal. Alternatively, it was contended that the respondent had purchased molasses out of free quota of another manufacturer at Rs. 165.00 per quintal and in the event of the respondent's contention not being accepted, valuation should be at Rs. 165.00 per quintal. Both the lower authorities overruled these contentions. The demand proposed was confirmed.

3. It is submitted by the learned counsel for the respondent that under Rule 6(b)(i) of the Valuation Rules, value should be based on the value of comparable goods produced or manufactured by the assessee or by any other assessee. He also contended that under proviso to Section 4(1)(a) of the Act, where goods are sold by the assessee at the price fixed under any law, the price or the maximum price, as the case may be shall be deemed to be the normal price in relation to the goods so sold. It is contended that since the price fixed or the controlled price shall be deemed to be the normal price and since the goods are comparable goods produced by the assessee, such fixed price should be the basis of valuation under Rule 6(b)(i) of the Valuation Rules. Shri T.R. Malik, SDR rebutted the above contentions and contended that the control price is the deemed price only for the purpose of demand of excise duty on the goods required to be sold at fixed prices and that price be regarded as the normal price for other purposes, that is, price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade and as such, fixed price at which the respondent sold 65% of the produce should be rejected and the ordinary price at which another assessee sold 35% of his production of goods should be adopted under Rule 6(b)(i) of the Rules.

"(b) where the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf in the production or manufacture of other articles, the value shall be based - (i) on the value of the comparable goods produced or manufactured by the assessee or by any other assessee : Provided that in determining the value under this sub-clause, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all

relevant factors and, in particular, the difference, if any, in the material characteristics of the goods to be assessed and of the comparable goods." 5. According to both sides, valuation has to be under Rule 6(b)(i) of the Rules, since the disputed goods are not sold by the respondent, but are captively consumed by the respondent. That being so, value shall be based on the value of comparable goods produced or manufactured by the respondent or by any other assessee. There is also no dispute that the goods captively consumed by the respondent and the goods sold by the respondent at the controlled price are comparable goods. Rule 6(b)(i) of the Rules requires that value shall be based on the value of comparable goods produced by the assessee or by any other assessee. The Rule does not state as to which of the two values, if available, should be preferred, whether price of the assessee or of any other assessee.

If the value of comparable goods produced by the assessee has no infirmity of any kind, the intendment of the Rule is that such value should be accepted. If the assessee does not produce and sell comparable goods or where the value of such comparable goods has some infirmity and, therefore, cannot be accepted, then the valuation should be based on the value of comparable goods produced by any other assessee. There is evidence in this case to show that other assessees sold molasses of second grade at varying prices, namely, Rs. 150.00 per quintal, Rs. 160.00 per quintal, Rs. 165.00 per quintal and Rs. 245.00 per quintal. The respondent sold 65% of the comparable goods at fixed price as required by law at Rs. 32.00. per quintal. According to him, this price is deemed to be the normal price under proviso (ii) to Section 4(1)(a) of the Act and hence valuation of comparable goods produced by the assessee is available and should be accepted. The answer of the Department is that the value of 65% of the molasses produced by the assessees and sold at Rs. 32.00 per quintal is deemed normal price only for the purpose of quantifying duty on such goods and cannot be regarded as the ordinary price or normal price as contemplated in Section 4(1)(a) of the Act and for the purpose of Section 6(b)(i) of the Valuation Rules and, therefore, cannot be adopted. It is also pointed out that the legal fiction of deemed price in the proviso (ii) to Section 4(1)(a) of the Act should be confined to the area limited by that proviso and cannot be applied to a situation under Rule 6(b)(i) of the Valuation Rules.

"Section 4. Valuation of excisable goods for purposes of charging of duty of excise. - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value, shall, subject to the other provisions of this section, be deemed to be - (a) the normal price thereof, that is to say, the 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, where the buyer is not a related person and the price is the sole consideration of the sale." "where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at a price fixed under any law for the time being in force or at a price, being the maximum price, fixed under any such law, then, notwithstanding anything contained in Clause (iii) of this proviso, the price of the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof." 7. The assessable value for the purpose of Section 4(1)(a) shall be the normal price, that is to say, the 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. Proviso (ii) deals with a situation where the price is controlled under any law as in this case. In such a case, where goods are sold by the assessee at the price or the maximum of the controlled price, such price or such maximum price shall be deemed to be the normal price thereof. In the absence of proviso (ii) it may be difficult to regard the fixed price as the normal price or the price at which goods are sold ordinarily by the assessee to a buyer. By virtue of proviso (ii), such fixed price shall be deemed to be the normal price. The deeming is only for the purpose of determining the assessable value under Section 4(1)(a)of the Act in order to determine the quantum of excise duty payable on the goods sold at the fixed price.

8. At page 242 of Principles of Statutory Interpretation by Justice G.P. Singh (Sixth Edition) it is observed as follows :- "In interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction."In Bengal Immunity Co. Ltd. v. State of

Bihar, AIR 1955 SC 661 (at page 680) it was observed :- "Legal fictions are created only for some definite purpose ... a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field."In Union of India v. Sampat Rai Dagar, AIR 1992 SC 1417, the Supreme Court construed the provision in Clause 5(3)(ii) of the Imports (Control) Order which provided that it shall be deemed to be a condition of every import of which a licence is granted shall be the property of the licensee at the time of import and thereafter upto the clearance through Customs and held that the fiction created was for the proper implementation of the Imports (Control) Order and the Imports and Exports (Control) Act, 1947 and to hold the licensee responsible for anything and everything that happens from the time of import till the goods are cleared through customs. It was held that the fiction cannot be employed to attribute ownership of the imported goods to the importer in a case where he abandons them and does not pay duty and receive the documents of title.

9. It is difficult to reconcile price or maximum price fixed by statutory authority with the concept of normal price i.e. ordinary price at which the assessee sells goods in wholesale trade, but for the legal fiction created by proviso (ii) to Section 4(1)(a) of the Act. By virtue of the proviso, the price or maximum price fixed by statutory authority is deemed to be the "normal price" under Section 4(1)(a) of the Act. The fiction has been introduced by way of equity to protect the assessee from being compelled to pay higher duty, that is duty, on any value higher than the fixed price on the goods actually sold at the fixed price. Such being the purpose, the legal fiction is required to be effectuated only for such purpose and cannot be extended beyond the purpose for which it has been created. The proviso (ii) to Section 4(1)(a) of the Act itself specifically limits the operation of the fiction in relation to the goods so sold at the price or the maximum price statutorily fixed. The valuation of goods not sold at the statutorily fixed price is beyond the purpose of the legal fiction. Thus it is clear that the language used to create the legal fiction itself stands in the way of the deemed normal price being adopted as the basis for valuation of goods not sold at all or sold at price different from the statutorily fixed price. Adoption of consequence of the legal fiction, i.e. the deemed normal price, to value goods not sold or sold at a different price would be impermissible as it would amount to extension of the legal fiction beyond the purpose for which it is

created. This inherent limitation of the fictional normal price or value must be read into the scheme of Rule 6(b)(i) of the Rules, as otherwise it would amount to extension of the fictional normal price or value to goods not sold at the statutorily fixed price or maximum price. The deemed normal price or value has this infirmity. It must follow the captively consumed molasses cannot be valued at Rs. 32.00 per quintal under Rule 6(b)(i) of the Rules.

10. Since the deemed normal price or value has such infirmity, the captively consumed goods are required to be valued on the basis of the value of comparable goods produced by any other assessee. That could be the value at which other assessees sell 35% of their goods in the wholesale trade. The Additional Collector adopted the price at which a unit of UPSSC at Tanda sold their free sale quota of molasses, i.e. at Rs. 245.00 per quintal. In the reply to the show cause notice it was stated the respondent had purchased molasses from Triveni Engineering Works Ltd., Khatauli at Rs. 150.00 per quintal on 23-5-1994 and from R.B. Narayan Singh Sugar Mills Ltd., Laksar on 4-6-1994 and from Titawi Sugar Complex, Muzaffarnagar on 20-8-1994 at Rs. 160.00 per quintal. It is pointed out that the two invoices produced by the respondent do not indicate the grade of the molasses purchased by the respondent, though one invoice indicated the quality as grade II. It is not possible for us to verify if the sales relied on by either side are stray sales. The Additional Collector rejected the invoices relied on by the respondent since the sales thereunder were in June and August, 1994 and adopted the invoice showing sale at Rs. 245.00 per quintal in April, 1994.

According to the respondent, they produced before the Collector (Appeals) invoices of March and April, 1994 evidencing sale at Rs. 150.00 per quintal. Whatever be the ordinary price at which other assessees sold comparable goods at or about the relevant time should be adopted as the basis for valuation. If there was price variation, the adjudicating authority could arrive at the average price for valuation under Rule 6(b)(i) of the Rules. The case has to go back to the adjudicating authority for determination of value and duty payable.

11. The impugned order is set aside and the case is remanded to the jurisdictional adjudicating authority for decision afresh in accordance with law and the

observations in this order after granting personal hearing to the respondent. Appeal is allowed.

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