Collector of Central Excise Vs. Sheela Foam Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-30-1997

Reported in : (1997)(94)ELT385TriDel

Appellant : Collector of Central Excise

Respondent : Sheela Foam Pvt. Ltd.

Judgement :
1. The Department is aggrieved by the order-in-appeal No.377-DEC-CE/MRT/88 passed by the Collector of Central Excise (Appeals), New Delhi, setting aside the order dated 1-2-1985 passed by the Assistant Collector of Central Excise, NOIDA, has filed this appeal.

2. Respondent, engaged in the manufacture of Polyurethene Foam bus seats, had filed price list in 1986 which had been approved on the basis of contract entered into between the respondent and the Maharashtra State Road Transport Corporation. Dispute arose on account of two price lists in Part II No. 131/87 effective from 1-4-1987 and No. 181/87 effective from 30-4-1987 filed by the respondent. Under the first price list, respondent declared Rs. 59.00 per running metre as the price of bus seat (special) 381/406x91/61. It was also indicated that the price was as per the annual rate contract subject to deduction of actual freight the quantum of which was not indicated. In the second price list the price was shown as Rs. 59.20 per running metre for the bus seat (special) 381/406x91/61. It was indicated that the price was as per annual rate contract subject to deduction of actual freight the quantum of which was not indicated.

3. Assistant Collector issued show cause notice stating that the cushions covered by the two price lists were identical and the price lists were filed on the basis of rate contract No. 15, dated 10-4-1987 which described the price as Rs. 59.20 and this price would be the real price for goods covered by price list No. 131 /87 also. Accordingly, he ordered that assessable value should be based on the price Rs. 59.20 per running metre under both the price lists. He also held against the deduction claimed for actual freight mainly on the ground that the quantum of freight was not indicated in the price lists. This order was set aside by the Collector (Appeals), according to whom, price list No.133/87 was based on an order dated 26-3-1987 and related to bus seat of a different quality under a different contract and, therefore, the declared price Rs. 59.00 was acceptable. He also held that the Assistant Collector ought to have allowed deduction of actual freight, subject to evidence. This order is now challenged by the Department.

4. According to Shri M. Ali, JDR, the goods covered by both the price lists are identical in nature and both are covered by contract dated 10-4-1987 and, therefore, the price in both the price lists should be Rs. 59.20. According to the learned Counsel for the respondent, the goods are of a different quality and the contract dated 10-4-1987 relates only to bus seats made out of special raw materials and the order dated 26-3-1987 related to price list No. 133/87 which related to ordinary bus seats and not bus seats manufactured out of special raw materials.

5. At page 15 of the paper book produced by the respondent is seen a copy of tender dated 14-11-1986 floated by the Corporation. Item 1A related to seat cushions of four different sizes of quality mentioned therein. Item 1B related to seat cushions manufactured out of special Polythene and Isocyanate and of similar sizes. At page 17 is the copy of the tender submitted by the respondent which quoted Rs. 59.00 per running metre for item 1A of the tender and Rs. 59.20 per running metre for item 1B of the tender. In other words, respondent quoted slightly higher price for cushions made out of special raw materials and slightly lower price for ordinary cusions. The tender would show that the Corporation was interested in buying 35,000 running metres of both varieties of seat cushions. Contract dated 10-4-1987 entered into between the Corporation and the

respondent did not cover both varieties of seat cushions but covered only seat cushions made out of special raw materials and the price was Rs. 59.20 per running metre. This would show that though tender was called for two qualities of seat cushions and respondent submitted tender for both qualities, the contract was only for special quality cushions, that is cushions made out of special quality of raw materials.

6. Price list No. 133/87 was based on annual .rate contract and effective from 1-4-1987 onwards. The order which led to price list No.133/87 bears the date 26-3-1987. It refers to seats of all four sizes referred to in the notice, tender and the contract. Price referred to is Rs. 59.00 per running metre. Unfortunately, the order makes no reference to the quality, whether ordinary seat cushion, or special seat cushion or whether seat manufactured out of the ordinary raw materials or special raw materials. Both the price lists take in special bus seats. We take it that the reference to "special seat" was on account of the requirement of special raw materials being used, column 3 refers to annual rate contract. It is not the case of the respondent that besides rate contract No. 15/87, dated 10-4-1987, there was any other rate contract entered into between the respondent and the Corporation. It is most probable that rate contract referred to was the one dated 10-4-1987 which, we have already pointed out took in only special bus seats which was the description given in the said price list also. The order dated 26-3-1987 was in response to a telegram issued by the Corporation. The copy of the telegram is not before us.

The telegram perhaps would have referred to the quality of the bus seats required. In the absence of the telegram, we have to go by the description of goods given in the price list as special and the reference to the contract. Looking at these circumstances, there can be no doubt that the goods covered by order dated 10-4-1987 were special bus seats made out of special materials in which case the order would be under rate contract dated 10-4-1987 and the price must be Rs. 59.20 per running metre. The Assistant Collector was, therefore, right in directing assessable value to be based on the price Rs. 59.20 and the Collector (Appeals) was in error in setting aside this part of the order.

7. The next aspect relates to the deduction claimed for freight. The quantum of freight was not mentioned in the price lists, since, according to the respondent, the exact quantum was not known at that time. The Assistant Collector was in error in holding the deduction inadmissible for want of particulars. He should have held the actual freight to be admissible for deduction, subject to documentary evidence in support of the quantum. This was what was done by the Collector (Appeals) and we find no ground to interfere in this regard.

8. We set aside the part of the order passed by the Collector (Appeals) directing assessable value of goods covered by price list No. 133/87 to be based on the price of Rs. 59.00 per running metre and restore the order passed by the Assistant Collector directing assessable value to be based on the price of Rs. 59.20 per running metre. In other aspects, the order passed by the Collector (Appeals) is confirmed. Appeal is allowed in part.