SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Nutri Foods Vs. Cce

Nutri Foods Vs. Cce

SooperKanoon Citation : sooperkanoon.com/12452

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-23-1997

Reported in : (1998)(75)LC118Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Nutri Foods

Respondent : Cce

Judgement :

1. Order-in-appeal No. ADN/388/91 dated 30.8.1991 passed by the Collector of Central Excise (Appeals), Bombay confirming the order-in-original No. GI/373/90 dated 6.12.1990 passed by the Assistant Collector of Central Excise, Bombay is under challenge in this appeal.

2. M/s. Anand Foods, Flavours and Fragrances Pvt. Ltd. (for short, Anand Foods) manufacture Soup Powder and Drink Powder in bulk, transfer the same to the appellant for repacking in unit containers and the appellant is to deliver the same to M/s. All Seasons Foods Ltd. (for short, ASFL) who actually buy the same from Anand Foods and sell the same to wholesale dealers. Appellant filed price lists 1 to 3 of 1988 and 583/88-89 declaring the assessable value as the sum total of the cost of raw materials, repacking cost and the appellants' profit margin. The Assistant Collector approved the price lists rejecting the declared assessable value and directing that the assessable value should be based on the wholesale price charged by ASFL to wholesale buyers on the ground that Anand Foods and

ASFL are related persons and the proviso (iii) to Section 4(1)(a) of the Central Excises Act, 1944 is attracted. This order was confirmed by the Collector (Appeals). The appellant filed an appeal before this Tribunal. The Tribunal approved the methodology adopted by the lower authorities and held that certain deductions have to be made from the wholesale price of ASFL and to work out the same, remanded the case to the jurisdictional authority. This order is .

3. During the period from 3.10.1988 to 7.3.1989 appellant was clearing the repacked unit containers at the prices declared in the price lists.

Accordingly, show cause notice dated 5.5.1989 was issued proposing demand of differential duty on the difference between the declared assessable value and the assessable value based on the wholesale prices charged by ASFL to wholesale dealers in respect of the period from 3.10.1988 to 7.3.1989. Though the appellant resisted the notice, the Assistant Collector confirmed the demand and his order was confirmed by the Collector (Appeals). These two orders were passed before the Tribunal decided the earlier appeal of the appellant in the decision . These orders were passed overruling the plea of the appellant for grant of legitimate deductions from the wholesale prices charged by ASFL to dealers. These orders are under challenge in the present appeal.

4. As we have indicated, the confirmation of demand by the Assistant Collector and the confirmation of his order by the Collector (Appeals) were prior to the earlier decision of the Tribunal. In that decision the Tribunal referred to certain permissible deductions and directed remand of the matter. We are told that the adjudicating authority has not taken up the matter for de novo adjudication in view of the pendency of the present appeal. As a consequence of the remand order, the position is that the exact approved price is yet to be calculated.

The demand has to be made on the basis of the final approved price.

Therefore, the orders under challenge in this appeal also have to be set aside and the case remanded to the adjudicating authority who will decide what should be the legitimate deductions, determine the approved price and on that basis quantify the demand.

5. For the reasons aforesaid, we set aside the impugned orders and remand the case to the jurisdictional adjudicating authority for decision afresh in the light of the observations contained in this order and after giving the appellant an opportunity of personal hearing.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com