

Unitron Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-07-1998

Reported in : (1998)LC285Tri(Delhi)

Appellant : Unitron Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Order-in-Original No. 34/89, dated 26-6-1989 passed by the Additional Collector of Central Excise, New Delhi is under challenge in this appeal. On an earlier occasion, the Deputy Collector had passed the Order and that had been set aside by the Collector (Appeals) for want of jurisdiction. Thereafter the Competent Authority took up the adjudication.

2. The appellant is engaged in the manufacture and supply of Computers including central processing units and principal devices. The appellant had supplied these excisable goods under two specific contracts to two buyers. Price Lists in Part II were filed along with copies of the contracts or purchase orders and on approval of the same, goods were cleared on payment of duty. The contracts referred to six items, namely, Computer System Hardware, Real Time Process Controller etc., Dot Matrix Printer, Pot Control Panels, Software and system engineering charges, and Installation and Commission Charges. Out of the six items, appellant declared price of only items 1, 2 and 4, viz. Computer System Hardware, Real Time Process Controller and Pot Control Panels. A visit to the appellants' premises and scrutiny of the Invoices showed that under the respective invoices, besides

collecting the price declared the appellant had collected Software System Engineering charges. In one case these charges were Rs. 2 lacs out of the total amount of Rs. 9,66,924 and in the other case Rs. 1,10,000 out of the total amount of Rs. 2,94,758 collected during the period August 1982 to March 1984.

Show cause notice dated 27-2-1985 was issued alleging suppression of correct value and proposing demand of differential duty on these two elements and availing the proviso to Section 11A of the Central Excise Act, 1944. Appellant resisted the notice on merit, as also on the ground of limitation. The Additional Collector did not advert to the contention of bar of limitation, considered the break-up of the Technical Service Charges or System Charges, directed exclusion of the charges for training to the staff of buyers and confirmed the demand on the remaining items. This Order is now challenged.

3. The show cause notice alleged that the appellant suppressed the real value of the main equipment of the Computers supplied against contracts, collected Rs. 3,10,000 on which duty of Rs. 46,500 was payable and the appellant failed to declare the full value and utilised the facility of self-determination. The Annexure to the show cause notice gave further factual particulars and stated that the appellant deliberately evaded payment of duty by resorting to undervaluation.

There is no dispute that the copies of the contracts were submitted along with the price lists. Admittedly the price lists did not refer to or include the disputed charges. Admittedly the contracts specifically referred to the disputed charges. As we have indicated, the contracts provide the break-up figures of the various items, one of them being Software and System Engineering Charges in one case and Technical Service Charges in the other case. The contracts also clearly indicated that excise duty included in the contracts was calculated after excluding these charges. If the charges are to be included in the assessable value, it may be a case of mis-declaration or undervaluation or the like. But, in view of the contents of the contracts which are self-explanatory, it cannot be accepted that the appellant suppressed any facts or even the correct value from the cognizance of the jurisdictional authority. In the circumstances referred to it was for the jurisdictional authority to scrutinise the contracts more carefully and consider whether any part

of the excluded item should have been included in the price list. The contracts indicated that the contracting parties were of the opinion that excise duty was not payable on the disputed charges and this opinion reflected in the contracts was placed before the competent officer. In these circumstances we are not able to agree that there was any wilful suppression of facts or wilful mis-declaration or intention to evade duty. Therefore, the larger period of limitation would not be available and the entire demand would be barred by time.

4. The charges in dispute are the sum total of the following seven aspects: 5. The Additional Collector held that element No. 7 would not be included in the assessable value, while the other elements will be included in the assessable value. Learned Counsel for the appellant conceded that element numbers 1 and 2 are includible in the assessable value. The dispute now relates to elements (3) to (6).

6. Element No. (3) is Environmental Specifications, that is, protection to be provided to the computer machine by the buyer while using the machine. By Flexibility Expansion is meant advice given in relation to the capability of the computer to undertake a few more function in future as and when required. Element No. (4) relates to a system for keeping the computer with other attachments at the site of the buyer.

Element No. (6) relates to Layout of the Front Panel, that is, a device for control of the system in buyer's premises. In our opinion, none of these elements has any bearing on the manufacture and clearance of the excisable product. According to Shri Sangia, JDR, the appellant has given the aforesaid advice in relation to the disputed aspects in order to earn goodwill and enhance marketability of the product and therefore the costs of the advices would be included in the assessable value. We have indicated the disputed aspects and the connotation of these aspects. All these aspects relate to the setting up of the computer system and user of the same in the buyer's premises. If this advice is not forthcoming from the appellant, buyers would naturally obtain competent advice from other sources. Relationship of these elements with marketability of the product is too tenuous to be taken serious note of. We therefore hold that the Additional Collector was justified

in including in the assessable value the cost of elements Nos. 1 and 2 but not of elements 3 to 6.

7. For the reasons indicated above, we set aside the impugned Order and allow the appeal.

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