

Techno Electronics Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-13-1998

Reported in : (1998)(102)ELT221TriDel

Appellant : Techno Electronics

Respondent : Collector of C. Ex.

Judgement :

1. The appeal challenges the order passed by Additional Collector of Central Excise, Chandigarh demanding Central Excise duty of Rs. 2,000/- from appellant on the ground that appellant had evaded duty on television sets by misdeclaring the cost of their manufacture as Rs. 4,950/-. By so declaring the cost of manufacture of TV sets, appellant took the benefit of exemption notification allowing the rate of duty of Rs. 1,500/- as against the higher duty of Rs. 2,000/- applicable if the price of the TV sets exceeded Rs. 5,000/-.

2. Arguing the case of the appellant, Shri Naveen Mullick, learned Counsel states that the department had not disclosed the basis for increasing the cost of the different items that go into the manufacture of TV sets including the labour cost. Apart from contesting the basis of costing adopted by the department as above, Shri Mullick raised an alternative plea that even if for argument's sake, the costing applied by the department is accepted as correct, there is no allegation that they had sold the TV sets at a price of more than Rs. 5,000/- per set.

They had declared the price of Rs. 4,950/- per set in the price list filed by them which have been approved by the Assistant Collector. When price under Section 4(1)(a) is available, resort to provisions of valuation rules is not called for, and, accordingly, the exercise of costing resorted to by the department is unwarranted.

3. Resisting the arguments of the learned Counsel, Shri K. Srivastava, learned SDR referred to the narration in the show cause notice and the thereto wherein the costing of various components and inputs including labour have been referred to. The costing has been worked out by the cost accounts officer of the department after scrutiny of the records available with the appellant. They had not come out with, what according to them, was the correct cost of the subject items if they were aggrieved with the formula proposed by the department. In the circumstances it was contended by Shri Srivastava that the plea raised in support of the appeal deserves to be rejected.

4. The rival submissions have been duly taken note of by us. We find that the same issue came up for decision in Collector of Central Excise v. Beltron India Ltd. - 1998 (98) E.L.T. 422. In that case also the dispute related to the proper costing of TV sets to decide whether their price was more than Rs. 5,000/- or not. The department had added certain elements like the cost of advertising, sales promotion activity incentives etc. and on that basis the cost of Television set exceeded Rupees five thousand. On merits it was held by the Tribunal that these amounts cannot be included in arriving at the cost. It was the submission by the departmental representative in that case that if the total cost of components was Rs. 150/- more than the cost shown in the cost data, the manufacturer in that case could not have sold the TV sets below a price of Rs. 5,000/-. It was observed by the Bench that price fixation is a complicated exercise resting on various facts, one of which may be the rate of tax or the rate of duty. By fixing the price at Rs. 4,900/- and thereby giving up part of profit the customer would be paying Rs. 500/- less as duty than what would be chargeable if the net price exceeded Rs. 5,000/-. It was then noted by the Bench that the department never challenged the genuineness of the price fixed in the contract and in the absence of such allegation or evidence the department could not have enhanced the assessable value.

5. The above reasoning would clearly apply to the present case though the department in the present case had not accepted the declared cost of the components unlike in the case cited. All the same, there is no case made out that the appellant received a higher price than what had been declared in the price list or shown in the invoices. As has been held by the Tribunal in the other case, even if the cost of the components of the Television sets exceeds the ceiling of Rs. 5,000/-, it will be possible for the manufacturer to still sell the TV sets at a price less than Rs. 5,000/- as the quantum of duty gets reduce by Rs. 500/- resulting in overall advantage. In the circumstances the impugned order cannot be sustained. We set aside the impugned order and allow the appeal.

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