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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-12-1998

Reported in : (1999)(112)ELT485TriDel

Appellant : Collector of C. Ex.

Respondent : Ghazipur Engineering Industries

Judgement :

1. The respondent is absent in spite of notice of hearing, but has sent a request for decision of appeal on merits. We have heard Shri M. Ali, JDR and perused the papers.

2. The respondent engaged in the manufacture of Oscillating Table fan with regulator filed a price list in part IV declaring the assessable value as Rs. 305.25 per unit and produced a copy of the agreement with M/s. Jay Engineering Works Ltd. It was seen that the buyer M/s. Jay Engineering Works Ltd. was supplying components and raw materials to the respondent at mutually agreed prices and all the table fans produced by the respondents were affixed with the brand name of the buyer and were being sold to the buyer at the declared price. The Supdt. of Central Excise by his letter dated 10-5-1988 required the respondent to file price list in part IV treating buyer as related person. The respondent waived show cause notice. After granting respondent opportunity of personal hearing, the Assistant Collector passed the Order-in-Original approving the price list at Rs. 355/- per unit as "agreed by the respondent" in part I. The order relied on the circumstance that M/s. Surya Electric Construction Company who were also manufacturers of table

fans with the brand name of M/s. Jay Engineering Works Ltd. had rate contracted at the same price and the price list filed by them approved rate of Rs. 355/- per unit in part I.The respondent who at the stage of personal hearing was agreeable to adopt Rs. 355/- per unit challenged the Order-in-Original producing a copy of the order passed by the Collector (Appeals) setting aside the order of approval in the case of Surya Electric Construction Co. passed by the Assistant Collector at Rs. 355/- per fan. The Collector (Appeals) found the very basis of the Order-in-original passed against the respondent had disappeared in view of the appellate order in the case of Surya Electric Construction Co. Collector (Appeals) also held that the circumstances that fans were produced with buyer's brand name and the entire production was being sold to the buyer is not sufficient to treat the buyer as related person of the manufacturer. Accordingly, the Collector (Appeals) set aside the order passed by the Assistant Collector. This order is now challenged by the Revenue.

3. Shri M. Ali, JDR submitted that the components and raw materials were being supplied by the buyer to the respondents not at mutually agreed prices but at prices fixed unilaterally by the buyer. No such averment was made in the letter of Supdt. of Central Excise and no such circumstance was referred to either in the impugned original order or in the appellate order or even in the memorandum of appeal. Therefore, we cannot accept that the prices of components and raw materials were fixed unilaterally by the buyer. The department has not placed before us any material to show the existence of interest in the business of each other. The main contention urged in the memo of appeal is that price of M/s. Surya Electric Construction Co. to independent buyers had been approved at Rs. 355/- per unit and the same value should be adopted for the respondent, since the buyer M/s. Jay Engineering Works Ltd. was not in a separate class of buyers. This contention is without substance. Firstly, the approval order passed against M/s. Surya Engineering Construction Co. was set aside in appeal. While M/s. Surya Electric Construction Co. was supplying fans to M/s. Jay Engineering Works Ltd. as well as other wholesalers, the respondent was selling the entire production to M/s. Jay Engineering Works Ltd. and not to any other wholesalers. In the absence of any relationship as contemplated under Section 4(4) (c) of the Central Excise Act, 1944 being established, the respondent cannot be directed to pay duty on the

price charged by the buyer to wholesalers or any price other than the consideration received from the buyer for the supply of fans. Even assuming that the price charged by the respondent to the sole buyer was slightly less than ordinary normal price charged by other manufacturers to wholesale dealers, the same cannot be regarded as the normal price in the present case since this was case of bulk buyer who was purchasing the entire production of the respondent.

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