

Kaivan Cosmetics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-28-1998

Reported in : (1999)(108)ELT188Tri(Mum.)bai

Appellant : Kaivan Cosmetics

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant manufactures talcum powder. It sells its entire production to M/s. Godrej Soaps Pvt. Ltd. Hence notice was issued proposing the assessable value of these goods to be the price at which they were sold by M/s. Godrej Soaps Pvt. Ltd. The Assistant Collector (whose order has been confirmed by the Collector (Appeals) confirmed the proposal in the notice. Hence this appeal.

2. Both the Assistant Collector and the Collector (Appeals) have applied the price at which the goods were sold by M/s. Godrej Soaps Pvt. Ltd. on the ground that the transactions between the two parties were not between principals and therefore there is a relationship between the two so as to attract Clause (c) of Sub-section (iv) to Section 4 of the Act. The notice did not indicate such a basis for the proposed action. The basis was that the entire production of goods sold by the appellant to M/s. Godrej Soaps Pvt. Ltd. Even assuming that this constitutes a relationship, the order of the Collector (Appeals) still not be sustainable. For the two parties to be held to be related to each other, it has to be shown that each of them has an interest in the business of the other directly or indirectly. The fact that the entire production of some of the goods manufactured by one was sold to the

other does not constitute such an interest. The interest that subsisted was between the buyer and seller of the goods according to the buyer's specification. This is not enough to hold them to be related persons (Union of India v. Atic Industries - 1984 (17) E.L.T. 323). The prices at which the goods were sold by M/s. Godrej Soaps Pvt. Ltd. cannot be the assessable.

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