Cce Vs. Mutual Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-01-1998

Reported in : (1999)(83)LC141Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Cce

Respondent : Mutual Industries

Advocate for Def. : Shri. R.S. Pandey

Judgement :

1. This appeal is filed by the Collector Central Excise, Bombay against the order of remand passed by the Collector (Appeals) Bombay on 268/91 dt. 22.7.1991.

2. Respondent, engaged in the manufacture of control unit components assembled and control unit carrying cases, filed two price lists in part II, one for components effective from 28.8.1989 declaring assessable value at Rs. 160/- per unit and the other for carrying cases effective from 6.10.1989 declaring assessable value as Rs. 75/- per unit. The price lists were duly approved on 30.10.1989 and 29.12.1989 respectively. Subsequently, respondent filed price list No. 65 dt.

6.1.1990 in part II for both components and cases, reducing the price by Rs, 16.84 per unit and Rs. 7/- per unit respectively. The revised price list was duly approved. Meanwhile, respondent cleared these excisable goods during the period from 28.8.1989 to 31.12.1989 on the original higher prices and paying Central Excise duty on such higher prices. Subsequently the respondent and the buyer, M/s. Electronics Corporation of India Ltd., found that the weight of the two varieties of goods manufactured by respondent and sold to the buyer was less than the weight stipulated in the contract and accordingly reduced the price to the extent indicated above and excess price paid was adjusted by debit notes issued by the buyer. In effect, respondent actually received the reduced price for goods supplied during the period from 28.8.1989 to 31.12.1989 but had paid duty higher prices. Respondent filed refund claim on 13.3.1990 seeking refund of excess duty paid. The Asst. Collector rejected the refund claim on the ground that the revised prices applied only respectively and not retrospectively, that no statutory documents were produced to show that the weight of the goods supplied during the relevant period by the respondent was the reduced weight noticed by both parties subsequently. He also held to the claim for excess duty paid till 13.9.1989 was barred by time.

3. In appeal, the Collector (Appeals) set aside the order and remanded the case for fresh consideration holding that respondent would be entitled to refund subject to verification from the original contract about the existence of the provision for variation in prices for reason of variation in weight of the supplied goods and verification of the contention that no part of the claim was barred by time. This order is challenged by the department.

4. It appears that the original contract required the components and cases to have weight of 1.14 Kg and 1.2 Kg respectively and the manufacturer and buyer subsequently found that the actual weight was 934 gms. and 954 gms. respectively. It was this realisation which led to price reduction. According to the respondent the contract contained price variation clause dependent on variation in weight of the goods.

It was this aspect which the appellate authority required the original authority to verify.

5. According to Shri K. Srivastav, SDR, it was unnecessary remand the aspect of time bar since the refund claim till 13.9.1989 was clearly barred by time. The. answer of the respondent is that in view of the price variation clause in the contract, the approval of prices declared in the earlier price lists must be regarded

as provisional and therefore the time limit of 6 months will not apply. Respondent placed reliance on the decision in Indian Aluminium Cables Ltd. v. Collector of C. Ex., New Delhi, . It is open to the adjudicating authority to consider this aspect also.

6. It is next contended that the revised price list could be effective only from the date of approval and cannot have retrospective effect. If the contract contains price variation clause and pursuant to the clause there was a price reduction, the manufacturer is entitled to bring the same to the notice of the proper officer who, on being satisfied about this aspect, would approve the lower price. This is not a case where the price once fixed was reduced for various commercial reasons. This is the case, according to respondent, where the prices originally fixed were related to the weight of the goods and weight was found to be less than the stipulated weight and therefore applying the price variation clause prices were reduced. In such a case, it could not be said to the price variation and the approval will have only prospective effect.

7. It is contended for the appellant that the right to refund would be subject to the amended provisions of Section 11B(2) of the Central Excise Act, 1944. This submission is correct and the adjudicated authority will have to consider this aspect also.

8. Shri R.S. Pandey appearing for the respondent submitted that after the remand, the Asst. Collector reconsidered the refund claim and rejected the same and the order has been challenged by way of appeal before the Collector (Appeals) and the appeal is pending. If this submission is correct, the appellate Collector will take note to the observations in this order in disposing of the appeal pending before him.