

Weston Electronics Ltd. Vs. Cce

Weston Electronics Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/14452

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-07-1998

Reported in : (1999)(81)LC472Tri(Delhi)

Judge : U Bhat, S T K.

Appellant : Weston Electronics Ltd.

Respondent : Cce

Judgement :

1. The appeal is directed against order in Original No. 148/94 dated 26.9.1994 passed by the Collector of Central Excise, New Delhi confirming demand of Central Excise duty of Rs. 82,53,150 on 16506 Colour Television sets manufactured by the appellant M/s. Weston Electronics Ltd. and imposing penalty of Rs. 7.5 lakhs.

2. The demand of duty relates to the period 16.12.1987 to 28.2.1989 on Colour Television sets manufactured and cleared by the appellant.

During the period upto 28.2.1988, the said goods were covered by exemption Notification 77/87 dated 1.3.1987 according to which such Television sets attracted duty of Rs. 1500/- if the value did not exceed Rs. 5000/- and duty of Rs. 1750/- if it did. For the period from 1.3.1988, the higher duty of Rs. 1750/- applicable for sets of value exceeding Rs. 5000/- was increased to Rs. 2000/-. Appellant had cleared 19660 sets during the subject period paying the lower rate

of duty of Rs. 1500/-. Show cause notice dt. 7.4.1992 was issued to the appellant alleging that they had released amounts of Rs. 300/- per set (Rs. 150 to Rs. 250 in some cases) as freight and handling charges, which were much in excess of actual expenses and by excluding the correct amount on these accounts which were worked out as Rs. 43.87 for the period 1.11.1986 to 31.12.1987 and Rs. 33.03 for 1.1.1988 to 31.3.1989, the value exceeded Rs. 5000/- and the higher rates of duty of Rs. 1750/- and Rs. 2000/- got attracted. The notice was contested on merits as well as on limitation. After appellant had appeared for personal hearing, Collector of Central Excise, New Delhi adjudicated the case confirming duty demand of Rs. 82,53,150 as against the amount of Rs. 99,09,000-00 proposed in the show cause notice. The Collector dropped the demand on 3154 sets sold at factory gate where there was no freight involved.

3. Earned Counsel for appellant, Shri V. Sridharan stated that duty has been demanded in respect of the Colour Television sets sold by the appellant at their depots by adding certain part of the freight and handling charges to their value which had the effect of taking such value beyond the ceiling of Rs. 5000/- per set attracting the higher rate of duty of Rs. 1750/- or Rs. 2000/- as the case may be for the periods upto 28.2.1988 and 1.3.1988 to 28.2.1989. Their plea before the Collector that the factory gate prices being available they should be adopted for all their depot sales also was not accepted, the Collector holding that the sales at factory gate to Delhi dealers and at their various depots to "dealers in other places constituted sales to different classes of buyers and hence different prices, could be applied. He had relied upon the Tribunal decision in Goramal Hariram Ltd. v. Collector of Central Excise, and the Judgment of the High Court of Delhi in Indian Rayon Industries Ltd. wherein it had been held that buyers in different states constituted different class of buyers. It was contended by the earned Counsel that such a stand arose from the aforesaid judgments which had reversed the earlier stand of the department that buyers in different states were not different class of buyers. When the show cause notice was issued it was not the charge that the buyers in different states were different class of buyers. The adverse finding on a different ground had been arrived at by the Collector as a result of rethinking of the position following the Tribunal and High Court decisions. Appellant had gone by the accepted position in law as it existed at the material time and appellant's

conduct in that regard cannot be held to be suppression or wilful misstatement to attract the longer period of limitation. Shri Sridharan pointed out that the rulings that buyers in different states constitute different class of buyers had been rendered with reference to such sales made at the factory gate. In this case while sales to Delhi buyers were made at the factory gate, the sales to other buyers were made from the different godowns and accordingly the principle laid down in the Goramal Hariram case distinguishing the Supreme Court Judgment in the Indian Oxygen Ltd. case will not apply. This is the view taken by the Tribunal in Collector of Central Excise v. Taparia Tools Ltd. 1998 (25) ELT 770 : 1998 (76) ECR 451 (T) and Geep Industries Syndicate Ltd. v. Collector of Central Excise, Final Order No. 712/98-A dated 4.5.1998 1998 (78) ECR 494 (T) as well as in other cases 4. On the question of the value of the Television sets exceeding Rs. 5000/- by disallowing part of the deduction on account of freight and handling expenses and adding that amount to the value, Shri Sridharan submitted that if the duty now demanded is deducted along with other admissible deductions from the price, the value will be less than Rs. 5000/- and hence only the lower rate of duty paid by them will apply and there is no short levy or short payment involved. Such a position had been laid down by the Supreme Court in Bata Shoe Company (P) Ltd. v. Collector of Central Excise Corner Stone Brands Ltd. v. Collector of Central Excise, Ahmedabad . Learned counsel, however, conceded that the subsequent decision of the Supreme Court in Assistant Collector of Central Excise v. Bata India Ltd. holds otherwise that what should be deducted from the price in terms of Section 4(4)(d)(ii) of Central Excise Act will be the duty actually paid and not what would be payable but not paid. He sought to distinguish this decision pleading that it was in the context of an ex-emption notification granting full exemption while in the present case appellant had paid duty under the Notification. It was also pleaded by the learned Counsel that the amount of freight has been wrongly calculated in the show cause notice and applied in the impugned order for determining the value of a set at more than Rs. 5000/- and thereby imposing the higher rate of duty. If the correct freight is calculated by multiplying the ratio of total freight amount to the total value of goods by the value of one set, the freight per set will work out to Rs. 122.77 as against Rs. 43.87 arrived at in the order. If this correct freight amount is deducted from the collection of Rs. 300/- made by them

on account of freight and handling expenses, the net extra realisation will be less than Rs. 250/- which is the differential duty demanded. In view of the deducibility of the said duty amount from the price in accordance with the original Bata Judgment, the value will be less than Rs. 5000/- and hence the lower exempted rate as paid by them was in order being consistent with the legal position as per the judgments then holding the field. The subsequent changed legal position cannot make the longer period of limitation applicable, it was pleaded, citing the following decisions: (i) Cosmic Dye Chemical v. Collector of Central Excise Pushpam Pharmaceuticals Co. v. Collector of Central Excise Refco Icematic Company v. Collector of Central Excise, New Delhi Final Order No. E/629/98-B1 dt. 14.4.1998 : 1998 (78) ECR 462 (T) of Tribunal.

5. Shri K. Srivastava, Senior Departmental Representative resisted the arguments advanced by the learned Counsel. He supported the Collector's order contending that the factory gate sales were confined to only buyers from Delhi and there was no normal Factory gate price. He submitted that the Supreme Court judgment in the second Bata case will be applicable in the present case and deduction of duty from the price to arrive at value should be of the duty actually paid and not the duty payable. On that basis, the value will be above Rs. 5000/- and the higher rate of duty will be applicable. The Collector has decided the matter correctly, he contended and pleaded for its being upheld and for the appeal to be dismissed.

6. We have considered the submissions of both the sides. We have perused the record. We have gone through the decisions cited. The Collector has accepted the correctness of the value of the T.V. Sets sold to dealers of Delhi at the factory and had dropped the demand of duty thereon. That demand was worked out on the basis that their value should be loaded by part of the purported freight and handling charges.

Such addition which would have boosted the value above the Rs. 5000/- mark entailing higher duty liability was not approved by the Collector in his order. The existence of factory gate price having thus been accepted, that value should be applicable for sales at depots also. The decision of the Supreme Court in the Indian Oxygen case clearly supports such a position. The Collector's Tribunal had

held that Delhi distributors and outstation distributors form different class of buyers is not correct as in that case sales to the different distributors were made at the factory gate. It was not a case of one purchaser or class of purchaser purchasing the goods at the factory gate and another purchasing from the depots which is the case here. In situations similar to the one obtaining in the present case, the Tribunal had held that all sales were to be governed by factory gate sale price. Collector of Central Excise, Aurangabad v. Taparia Tools Ltd. 1998 (25) ELT 770 : 1998 (76) ECR 451 (T) is one such case.

At the material time, Section 4 of the Act provided for the acceptance of the factory gate price as the assessable value. Section 4 of the Central Excise Act was amended by Finance Act, 1996 to the effect that where the price at which goods are sold by the assessee is different for different place of removal each such price shall be deemed to be the normal price in relation to each such place of removal. The term place of removal was also expanded to cover a depot or any other place or premises from where the excisable goods are to be sold after their clearance from the factory. After the amendment it would be in order to apply different values for removals from the factory gate and from the depot. For the sales in question from the depots, at the material time, the aforesaid amendment was not there and hence the law as laid down by the Supreme Court in the Indian Oxygen Ltd. case would be squarely applicable. We hold accordingly and set aside the impugned order. In view of the decision, we have taken, it will not be necessary to decide the other questions raised by the appellant namely time barred nature of the notice, deduction of the duty payable viz.

Rs. 1750/- or Rs. 2000/- from the price to determine the value as falling below Rs. 5000/-. We accordingly set aside the order and allow the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com