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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Mar-16-1999

**Reported in :** (1999)LC288Tri(Delhi)

**Appellant :** Xerographers Ltd.

**Respondent :** Commissioner of C. Ex.

**Judgement :**

1. In this appeal M/s Xerographies Ltd., Ahmedabad have challenged the Order-in-Original passed by the Collector of Central Excise, Ahmedabad dated 28-7-1989 confirming a duty demand of Rs. 10,99,994.12 against them apart from imposing a penalty of Rs. 2 lakhs.

2. Brief facts are: M/s Xerographies Ltd. engaged in the manufacture of Plain Paper Copier Machines with the Trade Mark "Ricoh Murphy", were selling their products through two other Companies, viz., M/s Murphy (India) Ltd., M/s Mecotronics (P) Ltd. By Show Cause Notice dated 25-2-1987 appellants and the afore-mentioned two companies were asked to show cause against various charges. It was alleged that appellants (M/s Xerographies) were evading duty by under-valuation. It was alleged that M/s Xerographies and the other two Companies were related persons within the meaning of Section 4(4)(c) of the Central Excise Act, 1944 and therefore the transactions between the appellants on the one hand and two distributor Companies on the other hand were not on the basis of principal to principal basis. The matter was adjudicated by the Collector who held that the price at which the Photo Copiers manufactured by appellants

were sold by M/s. Murphy (India) Ltd., and M/s. Mecotronics (P) Ltd. in the market would be the normal price for purposes of arriving at the assessable value of the goods in the hands of M/s. Xerographies.

3. We heard Shri J. Vellappally, Senior Advocate assisted by Ms. Monica Singal, Ms. Rajani Natongu and Mr. Tarun Gulati for the appellants and Shri K. Srivastava, Id. SDR for the Respondent Collector.

4. Ld. Senior Advocate submitted that the appellant Company had 18 shareholders of which M/s. Murphy (India) Ltd., held 9.22% of total equity shares. M/s. Mecotronics Ltd. was not a shareholder of the appellant Company. He drew attention to the fact that the price charged from M/s. Murphy (India) and M/s. Mecotronics Ltd. by the appellants were the same and all the sales of the aforesaid two companies were on retail basis and not on wholesale. The main basis on which the Collector had passed the impugned order was that M/s. Murphy (India) Ltd. and M/s. Mecotronics Ltd. were related persons of the appellants for the reason that certain office facilities and services of office personnel were common between the appellants and M/s. Murphy (India) Ltd. He also submitted that there was no factual or legal basis for the Collector to hold that the appellant and the two distributor companies were related persons for the purpose of Section 4(4) (c) of the Central Excise Act. Following case law was relied on in support: (1) M/s.

Calcutta Chromotype Ltd. v. C.C.E., Calcutta 1998 (99) E.L.T. 202 (SC) and Ralliwolf Ltd. v. Union of India 1992 (59) E.L.T. 220 (Bom.).

Stressing the fact that the entire sales by the appellants to the two distributors were on retail basis he contended that there was no basis for the Collector for denying the deductions provided under Section 4 such as adjustments by way of freight and 10% commission on sales by the distributors and adjustment by way of deductions to arrive at wholesale price from retail credit price. It was also contended that the Collector had wrongly rejected the objections raised by the appellants about the entire proceedings being time barred having regard to the fact that the assessable value as per the price lists filed by appellants had been approved and finalised by the competent authority from time to time and as such

there was no scope for invoking the extended period of limitation. There was also no justification for applying the provisions of Rule 173Q(1).

5. Ld. SDR opposing the contentions submitted that in terms of Section 4(4)(c) of the Central Excise Act "a related person" was a person who was associated with the assessee in such a manner that he had interest "directly or indirectly" in the business of the assessee and included a holding Company, a subsidiary Company, a relative and distributor of the assessee. He drew attention to the finding of the Collector that it was M/s. Murphy (India) Ltd., who had obtained Technical know-how from M/s. Ricoh of Japan. The original registration with DGTD was obtained by Shri A.K. Mahbubani of M/s. Mecotronics which was subsequently transferred in the name of M/s. Xerographers, the appellants. The factory premises of the appellants belonged to M/s. Murphy (India) Ltd. Shri J.M. Kothari of Murphy (India) Ltd., was employed as consultant by the appellants and both M/s Mecotronics Ltd. and M/s. Murphy India Ltd., were the distributors of the Photo Copier Machines manufactured by the appellants. These factors clearly indicated that the appellants and the two distributors had direct or indirect interest in the business of the assessee and each other. He further pointed out that the appellants had not disclosed the fact that Shri R.H. Thakkar, Quality Controller of M/s. Murphy (India) Ltd., and Shri S.G. Koppikar, R & D Manager of Murphy (India) Ltd., who were nominated as Directors in the appellant Company by M/s. Murphy (India) Ltd., and S/Shri D.R.Desai and A.H. Kazi were appointed as Directors of the appellant Company at the instance of the Managing Director of M/s. Mecotronics Ltd. He submitted that in terms of the Companies Act, 1956 a Company shall be deemed to be subsidiary of another, if one Company had control over the composition of the Board of Directors of another Company.

Having regard to these facts he submitted that the impugned order suffers from no infirmity and the same may be confirmed and the Appeal rejected.

6. We have given careful consideration to the arguments advanced by both the sides. Ld. Counsel for the appellants had relied on the Hon'ble Supreme Court decision in Calcutta Chromotype Ltd. v. C.C.E., Calcutta (supra) in support of his contention that since a company under the Companies Act, 1956 is a separate

entity and since the manufacturer and the buyers are separate Companies? they cannot be related persons for purpose of Section 4(4)(c). The Apex Court had observed that for the purposes of Section 4(1) of the Central Excise Act the value of excisable goods shall not be deemed to be the normal price thereof if the buyer is a related person and the price is not sole consideration for sale. Once it is found that the persons behind the manufacturer and the buyer (even if they are companies) are the same, it is apparent that the buyer is associated with the manufacturer and there was no bar to lifting of the corporate veil. Though it is difficult to lay down any broad principle to hold when corporate veil should be lifted or if on doing that it can be said that the assessee and the buyer are related persons. The Court had observed that this will depend upon the facts and the circumstances of each case and it will have to be seen who is calling the shots in both the assessee and the buyer. In the facts of the present case we observe that one of the distributors viz., M/s. Murphy (India) Ltd., has share holding (9.22%) in the appellant company. Further, the fact is also not in dispute that both Murphy (India) Ltd., and Mecotronics have appointed Directors in the appellant's Company. These and other instances like common use of premises and personnel referred to by the Collector in the impugned order in our view, adequately establish direct or indirect business interest between the manufacturer and distributor as envisaged in the definition of related person in Section 4(4)(c). Therefore the Apex Court decision in Calcutta Chromotype case does not appear to help the appellants in the present case.

7. Ld. Counsel had also placed reliance on the Bombay High Court decision in Ralliwolf Ltd. v. Union of India - 1992 (59) E.L.T. 220 wherein it was held that even in cases where the assessee company and the other company had a holding company - subsidiary company relationship, this would not ipso facto be sufficient to make the two companies related persons in terms of Section 4(4)(c) in the absence of any other extra commercial consideration between them. Reliance was placed on the Apex Court judgment in Union of India v. Atic Industries 1984 (17) E.L.T. 323. In the Atic Industries case the agreement showed that the transactions between assessee and the buyers were on principal to principal basis and no extra commercial considerations had been shown to exist between them. We observe that in the instant case the Collector has not given any finding as to the

existence of any extra commercial consideration in fixing the normal price between the appellant and the distributors. In view of this, we find merit in the point urged by the Id. Counsel that the impugned order fails to satisfy the test laid down in Atic Industries case and followed in the Ralliwolf case. We find that the appellant's contention that their sales to the distributors were on retail basis has also not been refuted by the Department. As regards the question of limitation also; having regard to the fact that the price lists had been regularly approved by the proper officer the bar of limitation raised by the appellants is well founded.

8. In the light of the discussion above we are of the view that the Appeal has merit and has to be allowed. Accordingly, the impugned order is set aside and Appeal allowed.

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