

Pearl Soap Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-09-1999

Reported in : (1999)(113)ELT498Tri(Mum.)bai

Appellant : Pearl Soap Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Application is for waiver of deposit of Rs. 1.37 crores (approx.) and penalty under Section 11 AC for equivalent amount.
2. Advocate for the applicant says that the applicant manufactures soap, as a job worker, for M/s. Wipro Ltd. and M/s. Swastik Surfactants Ltd. These two supply raw material and take back the final product.

Since the soaps were manufactured by the applicant as a job worker, it determined the assessable value of the soap by reference to Rule 6(b) of the Valuation Rules on the basis of cost of manufacture and profit.

In determining the cost of manufacture, applicant did not include duty paid on the inputs used in the manufacture, since Modvat credit was taken of such duty. He contends that on merits, this issue is decided in applicant's favour by the Tribunal in Dai Ichi Karkaria Ltd. v. Collector -1996 (81) E.L.T. 676. The demand, he says, is barred by limitation. Notice was dated 4-9-1997 issued for duty payable on clearances between August, 1992 and March, 1995. The department was already

aware that the applicant determined the assessable value on the basis of the cost of manufacture, and elements that go into the value were the subject matter of adjudication in November 1993 and in 1996.

Further, each of the price list filed during the period in question contained as an enclosure a certificate by the Chartered Accountant which indicated that the cost of manufacture have been taken "net of excise". The notice itself in para 2 of Annexure A acknowledges that the value declared did not include excise duty element. It does not allege any existence of facts justifying invocation of the extended period. The Commissioner, in his order, finds wilful suppression of facts without giving any reason.

3. The Departmental Representative vehemently opposes the application.

He relies upon the reasonings in the impugned order.

4. On merits the decision of the Tribunal in *Dai Ichi Karkaria Ltd. v. Collector* is prima facie in the applicant's favour. The applicant has an equally strong prima facie case on limitation for three reasons; firstly, the notice itself does not allege any of the factors under which extended period could be invoked and prima facie liable to be set aside [See *C.C.E. v. HMM Ltd.* -1995 (76) E.L.T. 496]. Secondly, the fact that the assessee did not include the duty paid on the inputs was known to the department through the Chartered Accountant's certificate produced and acknowledged in the notice itself. There is therefore no suppression of mis-statement prima facie. Thirdly, the subsisting decision being prima facie in the applicant's favour, there would be no reason for depositing the disputed amount. For the several reasons, we waive deposit of the duty and penalty and stay their recovery.

4. Since the appeal can prima facie disposed on merits as well as on limitation it is listed for hearing on 22-4-1999.

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