Pearl Soap Co. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-07-1999

Reported in : (1999)(85)LC554Tri(Mum.)bai

Judge : S T Gowri, J S Murthy

Appellant : Pearl Soap Co.

Respondent : Cce

Judgement :

1. The appellant, Pearl Soap Co., manufactures, out of raw material supplied by Wipro Ltd., soap which it returns to the latter. It cleared for the purposes of payment of duty, the value of the soap has been total of the cost of raw material, its manufacturing charges and profit earned by it. In the order impugned in the appeal, the Commissioner (Appeals) has confirmed the finding of the Assistant Commissioner that the price at which Wipro sells the goods to its dealers. Hence this appeal.

2. The reasoning advanced by the Assistant Commissioner, which the Commissioner (Appeals) accepts, is that since there is no sale of soap by the appellant to Wipro, the relationship between the two is of agent and principal and therefore Wipro is the manufacturer. This reasoning was adopted in his argument by the departmental representative.

3. We are unable to appreciate this reasoning. The fact that there is no sale of goods between the two parties does not render relationship as being one of agent principal. It is difficult to conceive of manufacturer by an agent accepting now the well settled definition of manufacturer of transformation of commodity into another commodity having a distinct name and character, it is the person or persons who engage upon such transformation who would be the manufacturer. This, in this case, was done by the appellant. The appellant is the manufacturer. The Commissioner accepts that the value to be determined under Section 4(1)(b) of the Act, i.e. by application of Valuation of Rules. The appropriate rule to be applied is 6(b)(2). (The value under Rule 6(b)(l), i.e. cost of comparable goods, is not available). The Commissioner has conveniently resolved this predicament by ignoring rule altogether and proceeding Rule 7. The provisions of Rule 7 only apply if application of Rule 6 is to be excluded. The value by applying Rule 6(b)(2) is the value declared by the appellant.