

C.C.E. Vs. Mohan Breweries and Distilleries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-03-1999

Reported in : (2000)(67)ECC278

Judge : G B Deva, a T V.K.

Appellant : C.C.E.

Respondent : Mohan Breweries and Distilleries

Judgement :

1. This is an appeal filed by the department against the impugned order dated 19.4.95 passed by the Collector (Appeals), Madras.
2. Heard Shri Prabhat Kumar, learned SDR for the Revenue. None appeared on behalf of the respondent inspite of the notice.
3. The issue is with reference to the determination of the value of the goods which were captively consumed. The Collector (Appeals) in the impugned order has rightly observed that no comparable evidence was brought on record in determining the value of the goods in terms of Rule 6 (b) of the Valuation Rules. Para five of the impugned order is relevant and same is as under:-- The show cause notice proposed to enhance the value in terms of Rule 6(b)(i) of Central Excise (Valuation) Rules ,1975 which take about value of comparable goods produced or manufactured by the assessee or by any other assessee. Therefore, unless the necessary ingredients are brought forward to prove that the goods

manufactured by the organised sectors, whose price is sought to be adapted are comparable to the goods manufactured by the appellants, the provisions of Rule 6(b)(i) cannot be invoked. Further, as rightly contended by the appellants, only when Rules 4 to 6(c) cannot be applied, the question of applying the best judgment under Rule 7 of Central Excise (Valuation) Rules, 1975 would be relevant. In this case, I find that the Assistant Collector has applied Rule 7 and at the same time relied upon Rule 6(b)(i) as the method for arriving at his best judgment and as discussed above, the ingredients of the Rule 6(b)(i) are totally missing. The carbon-di-oxide manufactured by the appellants has not been tested to determine its purity. There is no indication as to the purity of the carbon-di-oxide compared by the Assistant Collector and also the various elements which have been taken into account while declaring its price. In this view of the matter, I find that the Assistant Collector's order cannot be sustained and accordingly allow the appeal with consequential relief.

4. Since the issue involved herein has been rightly analysed by the Collector (Appeals), we do not find any infirmity in the impugned order, accordingly, appeal is dismissed.

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