Universal Cassettes and anr. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-25-2000

Reported in : (2000)(72)ECC628

Judge : G Srinivasan, S T S.S.

Appellant : Universal Cassettes and anr.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant is recording master tapes supplied by Gramophone Company of India Limited (GCIL) and producing copies on the cassettes.

Show Cause Notice dated 6.9.1994 was issued stating that the price charged by GCIL or Music India Limited (MIL) should be considered as normal price under Section 4 of the Act and final approval to be given to the price lists filed by the appellants. Differential duty was sought to be demanded thereafter. By the order dated 10.9.1985 the Assistant Collector confirmed the demand against which an appeal was filed before the Collector (Appeals), who by his order dated 6.1.1995 remanded the matter after following the judgment of the Supreme Court in Ujjagar Prints' case . Against the 2. Shri DD Gwalani, the learned Counsel appearing for the appellant argued that the order of the appellate authority is wrong, inasmuch as he has tried to approve the approach of the Assistant Collector in working out the price as per Rule 7 of the Valuation Rules. He states that what is sought to be levied is the price of the copyright holder.

3. We have analysed the argument made by the learned Counsel for the appellant. The Supreme Court in the clarificatory order in the case of Ujjagar Prints v. Union of India 1988 (39) ELT 493 at page 494 held as follows: The price at which he is selling the goods must be the value of the grey cloth or the fabric plus the value of the job work done plus the manufacturing profit and the manufacturing expenses but not any other subsequent profits or expenses. It is necessary to include the processors expenses, costs and charges plus profit but it is not necessary to include the traders profit to get the fabrics processed because those would be post-manufacturing profit.

What is therefore needed now is the consideration of deduction of the margin of profit of the copyright holders to arrive at the correct best judgment price under Rule 7 of the Valuation Rules.

5. The above observation, in our view, of the Collector (Appeals), while remanding the matter regarding the deduction of the margin of profit of the copyright holders is in line with what is held by the Supreme Court in Ujjagar Prints clarificatory order referred to above.

Whatever arguments made by the learned Counsel before us can be made before the adjudicating authority. We are therefore of the view that the order passed by the Collector (Appeals) under the circumstances is correct in law and the assessee can made all his representation before the adjudicating authority to whom the matter has been remanded.