

Flash Laboratories Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-28-2000

Reported in : (2001)(94)LC312Tri(Delhi)

Judge : J Balasundaram, S T G.R.

Appellant : Flash Laboratories Ltd.

Respondent : Cce

Judgement :

1. This appeal has been filed against confirmation of demand of duty of Central Excise amounting to Rs. 23,56,116.33.

2. The facts of the case in brief are that the appellants are engaged in the manufacture of "Prudent" Tooth Paste. They filed price list.

Price lists were approved by the Asstt. Commissioner under his Order-in-Original No. 87/CE/91. Pursuant to this order of the Asstt.

Commissioner, four SCNs were issued to the appellants alleging that their entire production was being sold to their holding company M/s.

Parley Products Ltd. and M/s. Parley Biscuits Ltd. which is another subsidiary company of M/s. Parley Products Ltd. and that the appellant was paying duty at the price list at which the holding company purchased the goods and not at the wholesale purchase price charged by the holding company in the course of

wholesale trade. The Asstt.

Commissioner while adjudicating the price list held that the holding company is a related person as per proviso (iii) to Section 4(1) of the Central Excise Act, 1944.

3. Shri M. Chandrasekharan, Ld. Sr. Adv. assisted by Shri Rupesh Kumar, Ld. Advocate submits that the four demands pertained to the period July '89 to Jan. 1991; that no doubt these four SCNs were issued pursuant to the orders dt. 14.2.1991 and 12.4.1991 which were quashed by the Commissioner (Appeals). Ld. Sr. Counsel, therefore, argued that the four SCNs were not maintainable.

4. On merits Ld. Counsel submits that though similar issue was decided by this Tribunal in the case of the appellant himself under its order No. 109/94-A dt. 19.5.1994, however, that order is to be examined in the light of the Larger Bench decision in the case of Samtel Electron Devices Ltd. v. CCE, Meerut . He submitted that when examined in the light of this Larger Bench decision the case of the Department stands nowhere in-as-much as the Larger Bench of this Tribunal in that case held that M/s. SCL were manufacturing picture tubes using electron guns purchased from M/s. Samtel Electron Devices Ltd. To compete in the market in the sale of picture tubes SCL had to fix its price. Depending on the end price of picture tube they fixed the price of electron guns. That price was given to M/s. Samtel Electron Devices Ltd. It was on that price M/s. SCL got electron guns imported from foreign countries. Picture tubes fitted with imported electron guns and those got from SEDL were sold at the same price.

Therefore, it cannot be held that M/s. Samtel Electron Devices Ltd. sold electron guns to SCL at a depressed value. Fixation of the price of electron guns taking into consideration the price of picture tube which was the end product was purely a commercial consideration. It cannot be termed as underhand dealing on account of relationship between the two companies. These circumstances go to show that: the relationship between Samtel Electron Devices Ltd. and SCL had no effect on the normal price of electron guns sold by SEDL. Ld. Counsel submits that when the order of the Tribunal in their own case is examined in the light of the findings of the Larger Bench of this Tribunal, the case of the Department is not proved. Ld. Sr. Counsel, therefore, prayed that the appeal may be allowed.

5. Arguing the case for Revenue Shri Sanjeev Srivastava, Ld. DR submits that the four SCNs which are the subject matter of the present appeal arose not because of the order dt. 14.2.1991 and 12.4.1991 passed by the Asstt. Commissioner but they arose out of the order-in-original passed by the Ld. Asstt. Commissioner under his order No. 87/CE/91. He submits that this order has not been challenged and therefore, this order had attained finality. He submits that thus four SCNs on which the present dispute arises are sustainable in law. Ld. DR, therefore, submits that the contention of the appellant that these four SCNs were as a result of two orders passed by the Asstt. Commissioner which was subsequently quashed by the Commissioner (Appeals) is incorrect. CCE, Kan-pur v. Flock (India) Pvt. Ltd. that where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order.

In so far as the Tribunal's Order No. 109/94-A dt. 19.5.1994 is concerned Ld. DR submits that this order squarely covers the present case on merits. He submits that the reliance on the Larger Bench order in the case of Samtel Electron Devices Ltd. placed by the Counsel for the appellant is misplaced in-as-much as the facts in the two cases are entirely different. He submits that the Sr. Counsel for the appellant also relied on the Judgment of this Tribunal in the case of Indian Oxygen Ltd. v. CCE, Calcutta in which this Tribunal had held that sales promotion being for mutual benefit of both buyers and sellers not sufficient to hold that dealers are related persons to the appellants and that the allegation of mutual interest between the assessee and the dealer merely on ground of sales promotion is not sustainable. He submits that this aspect was examined by this Tribunal in the case of the appellant themselves in its order dt.

19.5.1994. Ld. DR submits that both on merits and on law and facts the appellants have no case and therefore, prays that the appeal may be rejected.

7. We have heard both the sides, On careful consideration of the submissions made before us, perusal of the records and the evidence placed on record, we

note that the four SCNs pertained to the period 14.2.1991 to 31.3.1991 whereas the contention of the appellant was that these SCNs pertained to two orders approving the Classification Lists for the period July, 1989 to Jan., 1991 which were quashed by the Commissioner is not correct. We note that the period relied upon by the appellants is July 1989 to Jan., 1991 whereas the SCNs dealt with in the Order-in-Original pertained to the period 14.2.1991 to 31.3.1992.

We note that these SCNs arose out of the Order-in-Original No.87/CE/91. We note that this order was not challenged by the appellants and therefore, we agree with the contention of the respondents that these orders are covered by the decision of the Hon'ble Supreme Court in the case of Flock (India) Pvt. Ltd. relied upon by the Ld. DR. We, therefore, hold that the four SCNs and the Order-in-Original No.87/CE/91 are sustainable in law.

8. In so far as consideration of the case on merits is concerned, the appellants relied on the decision of the Larger Bench of this Tribunal in the case of Samtel Electron Devices Ltd. We note that the facts in this case relied upon by the appellants are different from the facts in the present case before us and thus the decision of the Larger Bench of this Tribunal in the case of Samtel Electron Devices Ltd. is entirely distinguishable. On the other hand we find that exact identical facts were examined by this Tribunal in the case of the appellants' themselves. Therefore, we hold that the ratio of the decision of this Tribunal in the case of Flash Laboratories Ltd. v. CCE, New Delhi is squarely applicable to the present case. Following the ratio of the decision of this Tribunal in the case of Samtel Electron Devices Ltd. and in their own case we reject the appeal on merits also.

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