Cce Vs. Jaydee Agrochemicals Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-17-2000

Reported in : (2001)(73)ECC631

Judge : R T Lajja, P Bajaj

Appellant : Cce

Respondent : Jaydee Agrochemicals Ltd.

Judgement :

1. In this appeal filed by the Revenue, the Order-in-Appeal dated 28.6.2000 passed by the Commissioner of Central Excise (Appeals) is under challenge. The Ld. Commissioner of Central Excise (Appeals) has recorded as under: I have gone through the case records. I find, there is a lot of merit in the submission made by the appellants and respectfully following the ratio of the Tribunal decisions, the impugned order is set aside.

2. We have heared Shri P.K. Jain, SDR for the Revenue and Shri A.L.

Mathur, Consultant for the respondents, M/s. Jaydee Agrochemicals Ltd. 3. The facts are not very much in dispute. The respondents were engaged in the manufacture of Agro Chemicals partly on job work basis for M/s.

Orchem Intermediate (P) Ltd., Hyderabad and M/s. Orchem Industries, Hyderabad and partly on their own account. The raw materials whether for production on job work basis or on their own account were procured from common sources i.e. from

M/s. Royal Traders, Jaipur, M/s. Chemi Organic Ltd., Vapi and M/s. Thana Acid & Chemicals, Mumbai. The raw materials for the goods manufactured on job work basis were received free of cost. For the supplies to their customers in respect of the goods manufactured on job work basis, lower prices were declared vis-a-vis the goods were sold on their own account. The Revenue had taken a view that as the normal prices were available, the same price should form the basis for assessment even in respect of the removals on job work basis.

4. We find that there was no normal sale to the principal on whose account, the goods were manufactured on job work basis. The Commissioner (Appeals) has taken a view that suppliers of raw material i.e. M/s. Orchem Intermediate (P) Ltd., Hyderabad and M/s. Orchem Industries, Hyderabad were different class of buyers and there could be different prices in such circumstances. The facts on record indicate that there was no sale as such to these Hyderabad parties. Thus, they could not be taken as separate class of buyers.

5. Shri A.L. Mathur, Consultant submits that the respondents have declared the prices in terms of the Supreme Court's decision in the case of Ujagar Prints v. U.O.I. 1989 (21) ECR 1 (SC) 6. Shri P.K. Jain, SDR replies that as the normal price were available, the ratio of the Supreme Court's decision will not be applicable.

7. We find that there is no discussion on this account in the Order-in-Appeal. The matter has been disposed of only on the ground that the Hyderabad parties were separate class of buyers. As we have already discussed above, they had supplied raw materials free of cost and thus, the goods could not be said to have been sold to them, the matter has to be re-examined in the light of the facts in the present case. As the Ld. Commissioner of Central Excise (Appeals) has not discussed the matter, we are constrained to set aside the Order-in-Appeal and remand the matter to the jurisdictional Commissioner of Central Excise (Appeals) for de novo consideration after affording opportunity to both the sides and then pass speaking appealable order as per law. Thus, the appeal is allowed by way of remand. The cross objections are also disposed of accordingly.