

Krishnan and Associated Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-03-2000

Reported in : (2001)(74)ECC370

Appellant : Krishnan and Associated

Respondent : Commr. of C. Ex.

Judgement :

1. This appeal is filed by M/s. Krishnan & Associated Engineers (hereinafter referred to as Party) who are manufacturers in addition to other goods of razor and razor blades including Blank cartridges. M/s.

Indian Shaving Products (hereinafter referred to as ISPL) who pursuant to an agreement dated 27-2-1991 with the Party supplied them for assembly and packing the products i.e. razors and razor blades on job work basis. The said goods after assembly/packing were stock transferred to ISPL and duty was paid based on costing supported by a C.A. certificate.

2. As the price of the goods did not include several components enriching its value, assessments were made provisionally under Rule 9(B) on a Bond of Rs. 25,000/- and since the Bond amount was insufficient 18 SCN were issued to the Party. Two more SCN were issued demanding duty on the Advertisement cost incurred by M/s. ISPL on the products manufactured by the Party on their behalf. The 18 SCN were decided by the Assistant Commissioner and appeals were filed by them, the Commissioner (Appeals) remanded the case back to the Assistant

Commissioner on the ground that Addl. Director General (Anti Evasion) had in the meantime issued a SCN demanding differential duty for the very same period for the very same goods treating M/s. ISPL as the manufacturer of the goods vide notice DZU/INV/8/98/630 dated 4-5-1998 and that SCN should be decided and thereafter these 18 SCN demands could be determined. The said SCN was decided by Commissioner (Adjudication) vide Order CCE(ADJ)/VLS/02/99, dated 3/4-11-1999. The Commissioner vide the impugned order in this case therefore decided the said 18 SCN amendment after invoking the powers under Rule 6 of the Central Excise Rules, 1944 and has taken up the other two notices as regards Advertisement cost also.

3. After considering the submissions of the party, the Commissioner found that the material at all relevant time was owned by ISPL and no material was added by the party during the packing/assembly conducted by them on job work. After comparing the various assessable values claimed and the CA certificate and the fact that ISPL distributed and marketed goods and on examination of the Agreement, he came to a finding that the ratio of Ujagar Prints decision the Constitution Bench 1988 (38) E.L.T. 535 (S.C.) in the present case was not applicable since ISPL is not a trader but itself a manufacturer and have manufactured the major raw material i.e razor blade and marketing them.

The goods i.e. razor and cartridges in semi finished or CKD condition are sent for packing to job workers and therefore the price at which ISPL has sold the goods should be the assessable value. He also found that in the case of Pawan Biscuits Co. - 1991 (53) E.L.T. 595 (T) dealt with the same issue and the terms and conditions entered into by ISPL and the party are almost the same as in Pawan Biscuits case and therefore Ujagar Prints decision of the S.C. would not apply, and confirmed the duty demanded on the basis of consumer price less sales tax and excise duty for 17 SCN and in the 18th SCN, since it pertained to period of October, 1996, he applied the amended Section 4 and deemed the ex-depot price to be applicable. As regards SCN No. 19 & 20, he confirmed one and dropped the other since the period considered with SCN as Sr. No. 1 to 4 out of 18 confirmed by him earlier based on Pawan Biscuits.

4. Commissioner further held that since the levy of duty had not been arrived at and primarily duty liability in the instant case lies on the party but the same may be treated as discharged if proof of payment is produced by payment of duty determined and confirmed in this order on their behalf by M/s. ISPL and thereafter ordered the demands on the party.

5. We have heard Id. Shri M. Chandrasekharan, Sr. Advocate assisted by Shri C. Harishanker, Shri M. Pushkarna and Ms. Savita Sharma for the appellants and Id. SDRs Shri P.K Jain and Sanjeev Srivastava for Revenue. After considering the material on record and the submissions made we find :- (a) Commissioner has come to a finding that the present case is identical to the case of Pawan Biscuits Co. (P) Ltd. -1991 (53) E.L.T. 595 (T). Therefore the Constitutional Bench decision of Ujagar Prints case 1989 (38) E.L.T. 535 (S.C.) and 1989 (39) E.L.T. 493 (S.C.) will not govern the valuation in this case of job work manufacturer. We cannot agree with this finding since S.C. in appeal in Pawan Biscuits case 2000 (120) E.L.T. 24 (S.C.) have categorically found that that case is similar to Ujagar Prints case & held : ..."Despite repeated attempts made by learned Counsel for the respondents, we are unable to distinguish this case from the ratio laid by the Court in the aforesaid two decisions of Ujagar Prints case".

Therefore, the basis of Commissioner findings and confirmation of demands does not survive. The order cannot be upheld. (b) As regard the demand on Advertisement charges confirmed, without considering the Supreme Court decision in the case of Philips India Ltd. -1997 (91) E.L.T. 540 (S.C.) cannot be upheld. (c) When we find no reason to uphold the determination of any demand, the order is required to be set aside. Before, we part with the same, we would like to observe that the Commissioner's finding that primarily the party is liable for duty and its discharge could be treated to be over, if proof of payment by ISPL on their behalf is shown, is not supported by the Central Excise Act or the rules thereunder. The Act provides that duty shall be levied on goods manufactured and collected as prescribed and Rule 7 of Central Excise Rules, 1944 that every person who manufactures, shall pay the duty. It is only in case of Rule 7A the procurer i.e. of molasses produced by Khandsari manufacturer shall pay the duty. Therefore, Razor Blades procurer i.e. ISPL's payment cannot be evidence of

discharge of duty under Rule 7 of the Central Excise Rules as is being found by the Commissioner.

5A. In view of our findings, the impugned order is set aside and appeal allowed.

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