

Precision Instrument Co. Vs. Commissioner of C. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-07-2000

Reported in : (2001)(129)ELT99Tri(Mum.)bai

Appellant : Precision Instrument Co.

Respondent : Commissioner of C. Excise

Judgement :

1. The issue for determination in this case is whether the appellant assesseees are related persons of their Sole Selling Agent and therefore whether the prices at which the goods are sold by the sole selling agent should be the basis of computation of assessable value of the goods sold by the assesseees. Initially the assesseees themselves had declared the valuation in Form-IV. They subsequently retracted therefrom and also claimed refund of the differential duty paid. The Assistant Collector denied the refund claim and directed the assesseees to continue to file the price lists in Form IV. Two appeals were filed against these two decisions. The Commissioner disposed of the appeals vide a single order. Substantial case law was produced before him to show there was no relationship between the assessee unit and the sole selling agents to invite the coverage of Section 4(1)(A)(iii) of the Act. The Commissioner made two observations. He said that while the judgments covered various facets of the relationship what was required to be seen was the entire relationship in perspective. Once this was done it was apparent that the two units were related. The second observation made by him was that what was paid to the sole selling agents was not a discount but that it

was a Commission. He based this observation on the fact that the sole selling agents were charged with the job of popularising the products. On his having upheld the lower order, the present appeal has been filed. The appellants requested for decision on merits. We have heard Shri B.K. Choubey for the Revenue.

2. The law of precedents requires the applicable ratio of judgment to be adopted in a given case. There could be a situation where particular precedent would cover a number of cases. It is also likely that to a number of issues in a particular case a number of judgments would be applicable. Therefore the Commissioner had erred in dismissing the case law cited before him on the ground that each covered only a particular facet.

3. We have seen the specific aspects of the agreement on which both authorities had based their opinion. The appellant was required to consult the sole selling agents while determining the prices. The other clause restricted the assessee from selling agent products to any person other than the sole selling agent without the authority of the latter.

4. We do not find that these two clauses are of such magnitude as to convert the buyer and seller relationship into one of the related persons. In the judgment in the case of Chloride Inds. Ltd. v. Collector of Central Excise, Pune [1999 (113) E.L.T. 956 (Tribunal)], the Tribunal had held that the sale of entire production to one party by itself was not an indication of reason for inter-relationship. In the same judgment it was also held that the advice rendered by the sole selling agent to the buyer as to price fixation did not alter their relationship. This judgment squarely applies to the issues on hand.

5. Shri B.K. Choubey relies upon the Supreme Court Judgment in the case of Coromandal Fertilizers v. CC [2000 (115) E.L.T. 7 (S.C.)] to sustain the charge of the Commissioner (Appeals) that what was received by the sole selling agent was not a discount but a commission. In the cited case the Supreme Court on examination of the contract had found that the payments were for services rendered and not for effecting sales.

This judgment would not apply to the facts of the present case because the sole selling agents were actually engaged in purchasing and marketing the products. The Tribunal in their case of CCE v. P.N. Dhoot Investment Co. Pvt. Ltd. [1999 (111) E.L.T. 118 (Tribunal)] held that advertisement expenses incurred by the buyer had benefited both buyer and the seller. Although that judgment was on the includibility of that charge in the assessable value, the view expressed therein would apply to the present case and the fact that the assesseees were incurring expenditure on sales promotion would not convert the character of their remuneration from a discount to commission.

6. On this observation we find that the impugned order does not survive. The appeal is allowed with consequential relief if any.

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