Collector of Central Excise Vs. Oswal Agro Mill Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-1985

Reported in : (1985)(5)LC1541Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Oswal Agro Mill Ltd.

Judgement :

1. This appeal has been filed by the Revenue against the order dated 18-4-84 passed by the Collector of Central Excise (Appeals), New Delhi.

By the said order, the learned Collector (Appeals) has allowed to the respondents the benefit of the deduction of freight element for movement of the goods from the factory gate to the closest delivery point.

2. The contention of the learned JDR is that Notification No.120/75-CE, dated 30-4-75 is a parallel mode of determination of the assessable value of excisable goods vis-a-vis their valuation under Section 4(a) of the Central Excises and Salt Act 1944 (hereinafter to be referred to as Act). He invited our attention to an order of this Tribunal reported as 1985 (19) ELT 326 (Kunal Engineering Co. Ltd. v.Collector of Customs & Central Excise, Madras). In this order it was held that a manufacturer, whose goods were classifiable under Item 68 of C.E.T. can determine his duty liability either with reference to the invoice price vide Notification No. 120/75-CE or avail himself of the mode of valuation set out under Section 4(a) of the Act. We have again read our order passed in the case of Kunal

Engineering Co. referred to by the JDR. We observe that the Hon'ble Supreme Court in their judgment 1983 E.L.T. 1896 (SC) (Union of India and Ors. v. Bombay Tyre International Pvt. Ltd. etc. etc.) have already held that freight whether equalised or actual would be an admissible deduction for arriving at the assessable value of excisable goods. We further observed that Notification No. 120/75 is a statutory Notification issued under Rule 8(1) of the Central Excise Rules, 1944. However, the said Notification cannot go beyond the provisions of Section 4 which lays down the principles and guidelines for determination of assessable value of excisable goods. Applying the ratio of the Supreme Court judgment supra, and on a careful re-examination of the matter, we are of the considered view that in determining the invoice price, the same principles have to be followed with respect to freight and transit insurance charges even where an asssessee avails himself of the invoice price procedure vide Notification No. 120/75-CE.3. The dispute in the present appeal centres around the question of allowing the appellant the benefit of deduction of freight incurred for moving the goods from the factory gate to the nearest delivery point.

Such a deduction is covered by the Supreme Court's judgment supra.

Therefore, the appellants are entitled to this deduction.