

itc Ltd. and Others Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-20-2001

Appellant : itc Ltd. and Others

Respondent : Commissioner of Central Excise,

Judgement :

1. The applications for retention here of the appeals of Crown Tobacco Co. and Master Tobacco Co, against the order of Commissioner of Central Excise, Delhi on the ground that their registered office are located in Mumbai are allowed.
2. The three applications are for waiver of deposit of duty of following amounts. Rs. 5.96 crores by ITC, Parel; Rs. 83.06 lakhs by Master Tobacco Co. and Rs. 41.36 lakhs by Crown Tobacco Co.
4. The appeals are against the order of the Commissioner, Central Excise, Delhi who was designated under the law to adjudicate the issue arising out of common notice issued by the Collector, Mumbai to the three applicants before us. The notice sought to determine the assessable value of the cigarettes cleared by each of the applicants by disallowing various elements as deductions.
5. The assessments here are provisional. It was the contention taken by the manufacturer that, while the assessable value is provisional the notice under Section 11A of the Act cannot be issued. Such a notice could only be issued within six months of the relevant, which as defined in the explanation to sub-section (2) of that section, would be the date of finalising of the provisional assessment.

Dealing with this contention the Commissioner has relied upon an earlier order issued by the commissioner of Central Excise Delhi on similar notice issued to manufacturers of cigarettes. The Commissioner, Delhi had taken the view that the fact that assessment were provisional was no bar to issuing a notice under Section 11A of the Act and adjudicate on it. He has therefore proceeded to confirm the demand for duty.

6. The appeal against the order, insofar as it relates to Bangalore factory of ITC was filed at Chennai. That bench which disposed of the appeal accepted the contention of the Tribunal during the pendency of the provisional assessment that it was not proper to issue of notice under Section 11A of the Act. It relied upon the judgment of the Bombay High Court in UOI vs. Godrej Boyce Manufacturers and Co.

7. The Supreme Court has stayed the operation of this order on an appeal filed to it by the department. It has in the order ordered that while the Commissioner will be at liberty to complete the assessment proceedings and demand if any raised, will not be enforced without the leave of the Court. The ratio of the decision of the Chennai bench is not destroyed by the fact of the stay of the operation of that order by the Supreme Court. We have already noted that the Court has itself ordered the demand not to be enforced pending the appeal.

8. This part gives the applicant prima facie ground for waiver of deposit. There is another aspect of the matter. The Commissioner's order deals with the clearance made between 1.4.80 to 20.3.83. The order of the Dy. Commissioner therefore covers the period adjudicated upon by the Commissioner. The departmental representative was not able to justify how when an order having been passed by one authority another authority can adjudicate afresh on the same issue for part of the same period.

9. Having regard to these aspects, we waive deposit of the duty demanded from ITC and stay its recovery.

10. The other two applicants manufacture cigarettes as job workers for ITC. The contention that they raised was that the value of the cigarette manufactured by

them would be determined in accordance with the principles laid down by the Supreme Court in *Ujagar Prints vs. UOI* 1988 (38) ELT 535. The Commissioner has rejected this plea on the ground that the principles laid down in this judgment would not apply in a case where supply of raw material by manufacturer was a job worker. In that situation, he says, the value of the goods manufactured by the job workers would be determined by the value of the supply of raw material. This proposition is prima facie unacceptable. There has been a number of decisions in which the Tribunal has applied the principles of *Ujagar Prints*. The Supreme Court's judgment in *Pawan Biscuits* 2000 (120) ELT 24 was concerned with such a situation of conversion of biscuit manufactured by Pawan biscuits out of raw materials supplied by Britannia, another manufacturer of biscuits to which Pawan returned the biscuits that had made. The contention that the elements of value under consideration were only incurred by ITC and would not form part of the cost of the manufacture was not rebutted by the department.

11. We waive deposit of the duty demanded from these two manufacturers and stay their recovery.

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