Bharat Heavy Electrical Ltd. Vs. Commissioner of C. Ex.

Bharat Heavy Electrical Ltd. Vs. Commissioner of C. Ex.

SooperKanoon Citation : sooperkanoon.com/29777

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-07-2003

Reported in : (2003)(154)ELT121TriDel

Judge : K Usha, N T C.N.B.

Appellant : Bharat Heavy Electrical Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellants, M/s. Bharat Heavy Electrical Ltd., is a Central Public Sector company with manufacturing units at several places i.e.

Haridwar, Hyderabad, Trichy, Jhansi, Bangalore, Ranipet, Bhopal etc.

Under the impugned order, duty demand of about Rs. 2 crores has been confirmed on the Bhopal Unit. Penalty of equal amount as the duty demand under Section 11AC of the Central Excise Act; another penalty of Rs. 20 lakhs under Rule 173Q of the Central Excise Rules, and demand for interest on the duty amount under Section 11AB of the same Act have also been imposed in respect of the goods manufactured in the Bhopal Unit and supplied to other units of the appellants' company during the period April, 1995 to March, 1999. At the time of original clearance of the goods, they had been subjected to Central Excise Duty. The impugned order has held that the goods had been under valued at the time of their clearance resulting in short levy. The duty demand has been raised invoking

the extended period of limitation under Proviso to Section 11A of the Central Excise Act on the ground that short levy of duty was the result of suppression of facts inasmuch as the assessee had not filed a proper price list under the appropriate proforma as provided in Rule 173C of the Central Excise Rules and that the assessee had not intimated the basis of costing applied for arriving at the assessable value of the goods transferred on inter-unit basis. The impugned order has fixed the assessable value of the goods in question by adding the overall profit earned by the appellants' company to the cost of production of the goods in question. The appellants contest the duty demand both on the ground of limitation as well as on merits. On the question of limitation, it is their submission that in the facts of the present case, there was no suppression of facts by the appellants.

The goods were manufactured and cleared under proper invoices after payment of duty. The valuation was originally done based on the price agreed to with the unit to which the goods were transferred. The clearance of the goods were in terms of prescribed invoices and the invoices clearly showed that the transfer was made by the appellants to other BHEL units. It is also submitted that the method of valuation adopted for original payment of duty was the standard method prescribed under the Companies Rules for inter-unit transactions and the method prescribed in these Rules was not prescribed with any intention to evade payment duty. The appellants have contended that, on the contrary, that method has only led to over-valuation of the goods. The appellants also submitted that there was periodical correspondence with the Excise Authorities on the question of valuation and that the assessee had pointed out that the price adopted for payment of duty compared favourably with the price of other manufacturers for identical and comparable goods. Reference in this context has been made specifically to Letter No. ETD/R.173C/ZUA/270, dated 26-11-1996 and ETD/Audit/259, dated 5-11-1985 etc.

2. With regard to the merits of the case, the appellants have contended that almost identical goods were being sold by them to unrelated parties and that the sale prices to those buyers compared very favourably with the assessable value adopted originally. During the hearing of the case, the Counsel for the appellants submitted a statement of such goods, their sale prices, and inter-unit transfer

prices to show that the valuation adopted could have only led to payment of higher amount of duty than a lower amount of duty.

3. We have perused the records and heard the learned DR also. The BHEL's Sales Norms effective from 22nd July, 1996 states the following about the prices for inter-unit transfer - (a) Management Committee in its 23rd meeting on settlement of inter-unit prices has taken the following decisions :- (i) Prices to be charged by any BHEL unit from a sister unit should not exceed the prevalent market prices by more than 10% and for Imported Items on the basis of landed costs plus 10%." From the Sales' Norms, indicated above, it is clear that inter-unit pricing is normally done only above the market price level and not below the market price level. The example cited in the impugned order itself makes it clear (though the impugned order has held to the contrary) that the price charged for inter-unit transfers is, if at all, only higher than the price charged from unrelated buyers. Para 11 of the impugned order deals with the transaction in respect of Traction Motor Type HS-15250A, The variation between the Traction Motors sold to unrelated party and transfer on inter-unit basis was only that the motor transferred to inter-unit had a pinion and axle suspension tube mounting bolt. Except for the added presence of pinion and axle suspension tube mounting bolt, the Traction Motors were the same.

Therefore, they were comparable goods for valuation and the value of one could be fixed after giving suitable adjustment for the value of additional item. Therefore, the appellants were right in holding that the goods were comparable and since their prices were comparable, there was no short levy. Rule 6(b) of Central Excise Valuation Rules relates to 'Captively Consumed Goods'. The first method prescribed under the Rule is the adoption of the price of comparable goods with suitable adjustment. If that method was not available only, assessable value has to be fixed based on the cost of production. Even under the second method, assessable value is to be fixed at the sum arrived at by adding the normal profit which would have been earned on the manufacture of the item under assessment to its cost of production. There is no warrant for taking into account the overall profit of the assessee, for working out the assessable value of a particular item, as done in the impugned order.

4. From the position stated above, it is clear that the original valuation of the goods for the purpose of assessment of duty was a standard valuation according to the rule and the original payment of duty was based on the price of the goods fixed according to the sales norms prescribed by the appellants. That norm, if at all, could have yielded only higher value than the normal price inasmuch as "the prices to be charged by any BHEL unit from a sister unit, should not exceed the prevalent market price by more than 10%." The assessee had, therefore, not suppressed any facts or adopted any colourable device to evade payment of correct amount of duty. A comparison of the prices for other buyers and for inter-unit transaction in comparable goods also do not reveal a pricing for inter-unit sales which is intended to evade payment of duty. Therefore, the appeal merits to succeed on the ground of limitation alone, though it would appear that on merits also the Revenue does not have a case.

5. In view of what has been stated above, the appeal is allowed with consequential relief, if any, to the appellants.