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Collector of Central Excise Vs. Voltas Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-1986

Reported in : (1987)(11)ECC33

Appellant : Collector of Central Excise

Respondent : Voltas Limited

Judgement :

1. M/s. Voltas Limited manufacture, amongst other things, diesel and battery operated fork lift trucks, falling under tariff item 34-B C.E.T. In the price list filed by them in proforma part V, which is meant for excisable goods for sale in retail, they claimed deduction of selling and administrative expenses and interest on working capital.

The deduction claimed was at 9.66% for diesel fork lift trucks and 10.49% for battery operated fork lift trucks. The Assistant Collector in approving the price list held that the deduction claimed under the above heads was not covered by the provisions of Rule 6(a) of the Valuation Rules and was hence not admissible. He, however, held that he was permitting deduction to the extent of 7.5% on the retail prices declared. The assessee appealed and the Appellate Collector, under order dated 12.8.1976, set aside the order of the Assistant Collector on the ground that it was not a speaking order and that no opportunity had been given to the assessee to make representations before the Assistant Collector passed the order. He remitted the matter to the Assistant Collector for de-novo proceeding and passing a speaking and appealable order. Thereafter the Assistant Collector took up the

matter for adjudication and issued notice dated 15.10.1976 directing the assessee to show cause why the prices claimed for approval should not be rejected and, instead, prices be arrived at by reducing the retail prices mentioned in the price list. In annexure 'A' attached to the show cause notice it was mentioned that the deduction claimed by the assessee appeared to be very high and since the value to be approved is to be determined under valuation Rule 6(a) it was considered necessary and reasonable to reduce the retail prices declared in the list by 7.3% to arrive at the price at which it appeared that the assessee would have sold such goods in the course of wholesale trade. The assessee sent a reply. On further adjudication, the Assistant Collector passed order dated 13.9.78 under which he held that the wholesale cash price at which the assessee sells the goods to the buyer is available, and there can be no abatement from the said price. He further held that differential duty on past clearances from 1.10.1975 should be recovered. He however further observed that he accepted the different prices charged from the different buyers of the same class provided they are properly declared. The assessee again appealed against this order. The Appellate Collector, under order dated 11.6.1980, held that there was no justification for the conclusion of the Assistant Collector that there was available a wholesale price for the subject goods and, therefore, the assessable value was to be determined in accordance with Section 4(1)(a) of the Central Excises and Salt Act.

Accordingly he remanded the case to the Assistant Collector with a direction to redetermine the assessable value under the provisions of Section 4(1)(b) of the Central Excises and Salt Act read with the relevant Central Excises (Valuation) Rules. He directed that in doing so the Assistant Collector shall determine the extent to which the assessee would be entitled for abatement under the various heads claimed by the assessee.

2. The Central Government, being of the view that the abovesaid order of the Appellate Collector was not proper, legal and correct, issued on 15.5.1981 notice under Section 36(2) of the Central Excises and Salt Act proposing to set aside the order of the Appellate Collector and to pass such order as may be deemed fit thereafter. The Government was of the view that the Assistant Collector was justified in holding that the wholesale price of goods was available and the

assessable value was to be determined under Section 4-(1)(a) of the Central Excises and Salt Act. The assessee replied opposing the proposed review and supporting the order of the Appellate Collector. It is the proceeding initiated under the said review notice that, on transfer, is now before us as this deemed appeal.

3. We have heard Shri G.V. Naik for the department and Shri A.N. Haksar for the respondent essessee.

4. Shri Haksar contended that even under the first order dated 22.6.76 of the Assistant Collector he had allowed abatement at 7.5%, as against the higher percentages claimed by the assessee, and that when, on appeal, the matter was remanded by the Appellate Collector to the Assistant Collector for passing a speaking order, the Assistant Collector could not have denied even this 7.5% relief to the assessee and that when, under the subsequent order dated 13.9.78, the Assistant Collector denied any relief of deduction he was in error. At an earlier hearing the reply for the department on this submission was that since, under his order dated 12.8.1976, the Appellate Collector had set aside the order of the Assistant Collector in toto the Assistant Collector was not bound, in the de novo adjudication, by the relief of abatement by 7.5% granted by his predecessor. While it is true that under the order of the Appellate Collector dated 12.8.76 the order of the Assistant Collector had been set aside in toto, it may be observed that when, in pursuance of the remand order, the Assistant Collector took up de-novo proceedings he issued a notice dated 15.10.1976 to which was added an annexure. The last paragraph in the said annexure reads as follows : "Such deduction claimed by assessee appears to be very high, and since the value to be approved is to be determined under valuation rule 6A(SIC), it is considered necessary and reasonable to reduce the retail prices declared in col. No. 3 of the price list by 7.5% to arrive at the price at which it appears that the assessee would have sold such goods in course of wholesale trade to a person other than a related person on the ground that there being no wholesale transaction for an identical product, it is declared deemed (SIC) fit to go by the margin between retail price and wholesale price for the identical class of goods viz. Motor Vehicles for which it appears that the general margin is about 7.5%." It is in pursuance of this notice that the Assistant Collector conducted the de novo adjudication and passed

his order. The extract from the annexure to the show cause notice would establish that in holding his de-novo adjudication the Assistant Collector had accepted, as the basis thereof, three facts. They are : (i) the determination of the assessable value was to be on application of Central Excise Valuation Rule 6(a); (iii) that the abatement was to be granted at 7.5%, unless the assessee was able to establish a case for abatement at a higher rate.

Shri Haksar is therefore correct in his contention that after issue of such a. show cause notice it was not open to the Assistant Collector to give up all these admitted facts and make out a new case, that the sales by the assessee were not all in retail but that there were wholesale sales also and there was therefore available a wholesale price. But yet this is what has been done by the Assistant Collector under his order dated 13.9.1978. Rule 6(a) of the Central Excises (Valuation) Rules reads as follows : "Where such goods are sold by the assessee in retail, the value shall be based on the retail price of such goods reduced by such amount as is necessary and reasonable in the opinion of the proper officer to arrive at the price at which the assessee would have sold such goods in the course of wholesale trade to a person other than a related person." Thus, in issuing the show cause notice dated 15.10.1976 the Assistant Collector not merely mentioned in his annexure that the sales 'were in retail but pressed into service a rule which dealt with cases of assessees who sell their goods in retail, the rule making provision for arriving at a deemed wholesale price. In the circumstances we are of opinion that the Assistant Collector acted entirely beyond his jurisdiction in arriving at his conclusion, in his order dated 13.9.78, that there were wholesale sales also by the assessee and hence the wholesale price relevant under Section 4(1)(a) of the Central Excises and Salt Act was available. We are therefore of further opinion that the Appellate Collector was entirely correct when he set aside this portion of the order of the Assistant Collector and held that the Assistant Collector was wrong in his conclusion that there existed a wholesale price and the assessable value was therefore to be determined in terms of Section 4(1)(a) of the Central Excises & Salt Act.

5. In addition, Shri Haksar contends that as a fact also there have been no wholesale sales whatever by the respondents, all their sales having been directly

to the consumers whose purchases were for their own use only and not for further sale. In issuing the review notice the Government placed reliance on the fact that the respondents had on several occasions sold fork lift trucks in lots of more than one unit and on some occasions sales have been effected in lots of 10 units also. The Government observed that in the case of goods like fork lift trucks sale in a lot of three or four trucks could be considered as sale in wholesale trade. In this connection Shri Haksar relied on the decision of this Tribunal in Collector of Central Excise, Madras v.Madras Rubber Factory Ltd. 1984 (Vol. 18) ELT 111. That was also a case of review notice by the Government. The question therein also was as to what would constitute sales to a wholesaler and what would constitute a retail sale. The Tribunal, after an elaborate consideration of the various submissions made by both parties, observed in paragraph 19 as follows : "From the above meanings, it is obvious that the concept of re-sale to consumers is built into "wholesale". In other words, one purcahses goods in wholesale in order to sell them in retail to consumers. The trading interest referred to by Shri Raghavan Iyer is very much there in a wholesale purchase (as opposed to a retail purchase). In this view, the quantity involved in a particular transaction is not conclusive to the true character of the transaction." The Tribunal thus held that a retail sale would be sale to any individual consumer for his own consumption. During the course of the hearing before us the assessee made available to the department its various invoices etc. for the relevant period and the same had been checked by the department also, the result of the check being that all the sales by the respondents appear to have been to persons or institutions who were direct users of the fork lift trucks supplied by the respondents. Hence even as a question of fact we are satisfied that the sales by the respondents were by way of retail sales only. As already indicated, this is the basis on which the department itself had earlier proceeded as is evident from the Annexure to the show cause notice dated 15.8.1976.

6. We hold that the Appellate Collector was right in setting aside the findings of the Assistant Collector that there existed a wholesale price and the assessable value was therefore to be determined' in terms of Section 4(1)(a) of the Central Excises and Salt Act. Accordingly, we hold that the review notice is to be discharged. This appeal is dismissed and the notice dated 15.5.1981 is discharged.

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