Cce Vs. Moon Beverage Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-26-2003

Reported in : (2003)(88)ECC598

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

Appellant : Cce

Respondent : Moon Beverage Ltd.

Judgement :

1. This appeal of the Revenue is directed against the Order-in-Original No. 03/Comm/MRT-I/97 dated 21.8.1997 passed by Commissioner of Central Excise, Meerut.

2. We have perused the records and have heard both sides. The issue which came up for decision in the impugned order was the valuation of Aerated Water manufactured and sold by the respondents M/s Moon Beverage Ltd. during the period 1994-95. Originally the goods were assessed provisionally. Subsequently, Show-cause Notice was issued alleging that valuation was incorrect. The Commissioner ordered acceptance of the ex-factory price as the basis of assessment with the following observations: "It is a, fact that the party is selling a part of their goods at the factory gate for sale within Ghaziabad and Sahibabad. The rest are transferred to Delhi depots for gale in Delhi area the percentage of sale at the factory gate is 4.5% & 20% in the period covered by the SCN & subsequent year respectively. This fact has also been verified by the jurisdictional

Range Officer. The party all along has contended that this sale made at the factory gate is a genunie sale and I find that nowhere in these proceedings has the department challenged this contention of the party.

As per Section 4 of the C.Ex. Act, 1944 the value (for the purpose of calculating the ad. val. duty) shall be derived from the selling price of the goods provided such a sale has the following essential features: (i) The price charged should be in the course of ORDINARY WHOLESALE trade.

(ii) The price should be the price chargeable at the place and time of removal.

Thus any selling price satisfying the above four criteria shall be taken into account while calculating the assessable value for charging any ad. val. duty. In case one or more of these criteria is not satisfied, Section 4 of the C.E.A., 1944 & the C.Ex. (Valuation) Rules, 1975 provide methods to calculate the assessable value in all such situations. However as per the principles of valuation as laid down by case law and departmental instructions, the burden is on the deptt. to prove that the selling price does not satisfy one or more criteria of Section 4 as listed above. This means that as long as the deptt. is not able to prove the absence of genuineness of the factory gate sale price any other method of arriving at the assessable value cannot be resorted to. This is amply clarified by the Supreme Court in their order in the case of Bombay Tyre International, 1984 (2) ECC 102 (SC) : 1983 (12) ELT 869 (SC). A similar situation was analysed by the GOI in two of their orders way back in 1982 in the case of Pure Drinks 1982 ELT 484 (GOI) & Wood Crafts, 1982 ELT 583 (GOI) wherein it was held that factory gate sale price, if available and even if constituting a small proportion of (sic).

Further, having accepted the factory gate price as the normal price there is no need to go into the details of costing and the quantum of additions to be made to the assessable value".

3. The grievance made in the present appeal is that the order is not correct and proper in view of the following: On examination of the order and the case records the board is satisfied that the Commissioner has not taken into account all the facts of the case before passing the order. He has not properly appreciated the

facts and evidence placed on records and accepted the plea of the party without even examining its veracity and has erred in dropping the demand, inter alia, on the following grounds: The Adjudicating Officer has not discussed any facts and details to support his view that ex-factory sales were effected and wholesale prices to independent buyers for various brands of aerated waters existed to enable determination of 'Normal Price' which should form the basis of assessment for transfers to depots. The Adjudicating officer has also not considered and appreciated the break up of the sales in respect of eight brands of aerated waters/beverages to wholesale buyers at factory gate and the total prices charged including duties, taxes rentals for crates etc. on the other hand, the Adjudicating Officer went wrongly, by the Assistant Commissioner's report dated 28.8.1997 which was called by him over telephone and which gave only certain broad and perfunctory summary of total removals including removals to Depots and gate sales.

Though some sample invoices of factory gate sales were submitted these were only documents prescribed to accompany clearances effected in terms of Rule 52A of Central Excise Rules and not commercial invoices.

The Commissioner failed to appreciate that even if there was some ex-factory sales, they were not sufficiently representative of ordinary sales in wholesale to independent buyers at arms length for all brands of aerated waters, the enable determination of price under Section 4(i) (a). The prices at which the duty was paid for ex-factory, sales were exactly the same as the depot prices less deductions for excise/ sales tax, rentals and the freight. The Commissioner failed to appreciate that the prices charged in invoices issued under Rule 52A were arrived from Depot sale prices that were worked backwards, by making arbitrary deductions for transport and ROC to arrive at the assessable value.

The Commissioner also failed to appreciate the fact that it was only from 1st April, 1994, that the assessee had started claiming that the wholesale prices to the customers included rental for the crate at the rate of Rs. 7.50 per crate for 24 bottles. No practice existed for charging such rentals prior to 1.4.1994 and even though the prices scheme was revised from 1.4.94 onwards, the deductions

claimed towards rentals were totally arbitrary, and had no nexus with the actual taking into account cost and other factors (even if these did not form part of the assessable value). The assessee had in fact a system of sale of its aerated waters on uniform pricing basis and as could be seen from March 1994 price list an average freight deduction was also claimed from the wholesale price to dealers apart from element of excise. From April 1994 though the wholesale price charged from customers was increased, the assessee claimed the same to include arbitrarily a rental element of Rs. 7.50 per crate and an average freight which was higher than what was established freight deduction claimed in March' 94. It is clear that assessee had claimed certain arbitrary deductions for transport and rent on containers without any formal documentary support evidence." 4. It is the contention of the respondents that valuation ordered by the Commissioner is entirely in terms of Section 4 of Central Excise Act that goods are to be assessed at the normal price at which they are sold on ex-factory basis. The present appeal does not make out a case contrary to the finding of the Commissioner that ex-factory price was available for the goods and they were liable to be assessed at those prices.

5. A perusal of the records and the submissions made by both sides do not show that the Commissioner made any error in holding that the ex-factory prices were available and those prices should constitute assessable value. The appeal has no basis. It has been filed in routine, so that no adverse adjudication order is left uncontested. The appeal fails and stands dismissed.