

Commissioner of Central Excise Vs. Godavari Manar S.S.K. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2003

Reported in : (2003)(158)ELT663Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Godavari Manar S.S.K. Ltd.

Judgement :

1. This appeal is filed by Revenue. The respondents are manufactures of sugar and molasses.

"The assessee have cleared molasses at two different prices viz. Rs. 601/- PMT and Rs. 575/- PMT, during the months of August, 75, the molasses were drawn form the same steel tank and there could be difference in grade or quality of molasses. Therefore, SCN was issued by Range Superintendent vide F.No.RII/GMSSK/SCN/95/1169 dtd.2.11.95 demanding the differential duty of Rs. 2,636/- calculating at the rate of Rs. 601/- PMT for the entire quantity cleared during the month.

The Assistant Commissioner, Central Excise, Nanded vide his OIO No. 71/96 dtd.9.1.96 has withdrawn the SCN holding that the normal practice of sale of molasses is through calling for Tenders. After checking the bidding a contract is entered into sale to the bidder who wins the tender. Thus, in case of sales through

contracts, each contract is signed for a different price depending upon the quotations. All the molasses sold against a particular contract is sold at that price regardless of on what date the molasses is physically lifted. In the instant case, it happened that molasses sold against two different contracts at different prices is lifted on the same day and invoices for different prices are raised on the same day. Under these circumstances, the only reliable method of determining the normal price is to check the price at which the contract for sale has been entered into. Hence, SCN was not sustainable.

The OIO No. 71/96 dtd.9.1.96 passed by Assistant Commissioner, Central Excise, Nanded Dn. was reviewed and appeal against the same was filed with Commissioner (A) Pune by the department on the following grounds: 1) The Sugar Technologist of Vasantdata Sugar Institute, Pune has determined the cost of production of molasses as Rs. 852.42 PMT plus other incidental cost irrespective of grade of molasses, adding the minimum overheads, the value cannot be less than Rs. 1000/- PMT. In view of this report, the assessee should have cleared the molasses not less than Rs. 1000/- PMT or at least they should have paid the duty considering minimum value of molasses as Rs. 1000/- PMT. 2) The assessee has not complied with instruction No. 26/95 dtd.10.11.95 issued by Commissioner, Central Excise, Customs, Aurangabad while clearing the molasses and paying the duty.

3) The Assistant Commissioner should have considered the fact that the production cost of molasses itself is higher than the value of clearance and recovered the duty considering the value of molasses as Rs. 1000/- PMT. The Commissioner (A), Pune vide OIA No. A-502/97 dtd.28.11.97 has rejected the appeal finding that, in this case department has not doubted genuineness of the price, at which molasses were sold. Merely because prices were lower than the cost of production, assessment is being sought to be made at the price of Rs. 1000/- PMT being the cost of production + other incidental charges. This is totally incorrect as under Section 4, once the normal price at which the goods are sold is available, the department cannot reject the normal price merely because it is less than the cost of production, specially when the genuineness of the price is not in doubt. Sine the department has not questioned the genuineness of the price at

which, molasses were sold which was fixed by inviting tender etc.

these prices cannot be rejected.

b) The Commissioner (Appeals), rejected the appeals by the following order:- "I have carefully considered the submissions made by the appellant as well as respondents. I find that in this case, department has not doubted genuineness of the price at which molasses were sold. Merely because prices were lower than the cost of production, assessment is being sought to be made at the price of Rs. 1000/- PMT being the cost of production + other incidental charges. This is totally incorrect as under Section 4, once the normal price at which the goods are sold is available, the department cannot reject the normal price merely because it is less than the cost of production, specially when the genuineness of the price is not in doubt. Since the department has not questioned the genuineness of the price at which molasses were sold, which was fixed by inviting tender etc.

these prices cannot be rejected. I, therefore, hold that Assistant Commissioner has correctly dropped the show cause notice.

Departmental appeals having no merits, are rejected." "1. The value of the molasses has to be determined on the basis of cost of production and margin of profit even if these are not captively consumed or to be sold in open market after inviting tenders etc.

2. The Sugar Technologist of the Vasant Dada Sugar Institute, Pune has determined the cost of production of molasses as Rs. 852/- PMT without adding any overheads irrespective of grade of molasses.

Adding the minimum overheads, the value cannot be less than Rs. 1000/- PMT or at least they should have paid the duty considering minimum value of molasses as Rs. 1000/- PMT. 3. The Assistant Commissioner should have considered the fact that the production cost of molasses itself is higher than the value of clearances and recovered the duty, considering the value of molasses as Rs. 1000/- PMT. 4. During the same month of clearances i.e., in August, '95, the assessee have cleared the molasses at Rs. 601/- PMT and paid duty accordingly. Then, taking

into consideration the fact that the comparable prices for the goods are available and tender prices varies in each case, the duty should have been paid by the assessee on the highest price available for the same grade molasses during the relevant period. Therefore, Assistant Commissioner should have at least confirmed the demand on the basis of comparable price available for the same goods during the relevant period.

5. Also goods sold in both the cases, where different prices are charged, are sold to same class or buyer i.e. industrial consumers, then duty should have been debited considering the highest sale price.

6. The molasses were not sold in this case in "Wholesale Trade" since separate sale transaction have been entered into with each individual consumer which cannot be considered as a 'class of buyer' in terms of the provisions of Section 4 of Central Excise Act, 1944.

In such a situation, assessable value can be worked out on the basis of Central Excise Valuation Rules, 1975 as done by Vasantdada Sugar Institute, Pune. However, taking into consideration the market conditions, the Assistant Commissioner should have at least confirmed demand at the comparable price of Rs. 601/- PMT, though the price on cost construction method works out to Rs. 1000/- PMT as stated above.

3) When the matter was called, the DR re-iterated the grounds taken in appeal. None appeared for the respondents. After considering the submissions made and going through the records, it is found:- a) The fact that the two clearances were effected on the basis of different contracts entered into and that the contracts are not being questioned is not disputed by Revenue. The clearances are on different invoices dtd. 5.8.95 and 11.8.95 of the molasses from the same tank but at prices at Rs. 601/- PMT and Rs. 575/- PMT and there are clearances on intermediate days also as it appears from the show cause notice at the rate of Rs. 575/- PMT only. The show cause notice does not allege any cost of manufacture or no wholesale sale to have been effected were taken therein. The grounds now taken by Revenue are beyond the charges raised in the notice.

b) Considering the grounds, as raised in the notice i.e. whether different prices could be accepted as 'value' under Section 4 of the Central Excise Act, 1944 when such removals are on same day to same class of buyers, at Sl.No.4 to 6 in this appeal before us, it is found that instructions exist in the BASIC OF DEPARTMENTAL INSTRUCTIONS ON EXCISABLE PRODUCTS, Third Edition, corrected upto 31.8.1989, compiled by The Directorate General of Inspection, Customs and Central Excise, New Delhi, which provide that same goods, depending upon the price charged, will get assessed at different values and contract prices, even if oral, have to be accepted provided the contracts are not otherwise impugned. In this case, the original authority has determined that the contracts have been entered into after calling for open tenders and these contracts have not been impugned in any manner in the appeals filed by Revenue in this case. Therefore, the original authority's order in accepting different values, as per different contracts, even though clearances have been made from the same tank of molasses cannot be faulted.

c) Considering the ground take in rejecting the values adopted on the basis of cost of production being more than the sale price, it has to be observed that this issue is now well settled by the Apex Court vide its decision in the case of CCE, New Delhi v. Guru Nanak Refrigeration Corporation [2003 (153) ELT 299 (SC)] wherein the Apex Court did not uphold the notices when, no flowback was alleged and the sales were at arms length as in this case. The grounds, especially Nos. 1 to 4, as taken in this case, therefore will not cause the upsetting of the Assistant Collector's order.

4. In view of the findings arrived, the Revenue's appeal is required to be dismissed. Ordered accordingly.

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