Dharnendra Inds. Ltd. Vs. Commissioner of Cen. Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-21-2003

Reported in : (2004)(164)ELT435Tri(Mum.)bai

Judge : J Balasundaram, A M Moheb

Appellant : Dharnendra Inds. Ltd.

Respondent : Commissioner of Cen. Excise

Judgement :
1. The appellants herein are engaged in the manufacture of Ice creams falling under Chapter 21.05 of the Schedule to the C.E.T.A. 1985. They filed price lists with effect from 10.3.94 and on scrutiny of the same it was found that the appellants' company had entered into an agreement with M/s. Dharnendra Marketing Co. for marketing and distribution of products manufactured by them. M/s. Dharnendra Marketing Co. was a partnership firm with one partner being the appellants company owning major portion (75%) of shares in the company and the other partners included the wife of the Director of the appellants company and the third partner was M/s. Fly Up Fashions Ltd. The sale of ice creams through the Marketing company was found to be sale through related person and the price declared in the price list was much less than the price charged by the related person. Therefore, 9 show cause notices covering the period from March, 1994 to June, 1996, raising total differential duty of Rs 1,05,05,055.55 were issued. The notices also proposed penal action. The notices were adjudicated by a common order of the Asstt.Commissioner confirming the duty demand, disallowing the

deductions claimed and imposing penalty of Rs. 25,000/- on the appellants. The Commissioner (Appeals) agreed with the finding of the Asstt.Commissioner that the appellants and M/s. Dharnendra Marketing Co. are related persons within the meaning of Sec.4(4)(c) of the Central Excise Act,1944, as having interest both directly and indirectly in the business of each other. However, he directed that the assessable value should be re-determined under the related person clause of Section 4 by extending all permissible deductions under the law. In the present appeals, the appellants challenged the finding that they and M/s. Dharnendra Marketing Company are related persons.

2. None appeared for the appellants in spite of notice. We note that the appeals have been coming up for hearing from time to time and the appellants have never been represented. This shows that they are not serious about pursuing their appeals. Hence we heard the ld.SDR and perused the records and pass our order.

3. We note that the lower Appellate Authority has given clear finding for coming to the conclusion that the appellants and the Marketing Company are related persons. For example, he has proceeded on the basis of share holding. He has also found that the entire advertising charges and sales promotion is with the Marketing company and any expenses incurred by the appellants in regard to the above is required to be re-imbursed by the Marketing Company; that while selection of dealers/distributors for marketing their product is made by the Marketing Company, the appellants are obliged to deliver the products to dealers as per the directions of the Marketing Company; all products so supplied to the dealers are invoiced by the Marketing company at the price fixed by the manufacturer and the Marketing Company is within its right to allow any discount to the dealers as well as distributors provided that the dealers rate is not below the contracted rates fixed by the appellants. He also found that the appellant unit is bound to provide deep freezer boxes to the dealers/distributors and that the main terms and conditions of the partnership deed of the Marking company is that the net profit/loss after deducting all deductions are to be divided among partners according to their investments. He has established mutuality of interest between the appellants and the Marketing Company, He has found that extra commercial consideration earned by way of profit from the Marketing company accrued on

account of the appellants. He has brought out the identity between the Marketing company and the appellants as well as the financial flow back. None of the above findings has been satisfactorily dislodged in the appeals filed before us. We also took note of the decisions relied upon by the ld.SDR in the case of Narendra Industries v. CCE, Rejkot [2001(132)E.L.T.141(Tri), wherein it has been held by the Tribunal that mutuality of interest exists between the manufacturer and its marketing company when there is substantial financial transaction between the two. In the case of Nirlex Spares (Pvt.)Ltd. v. CCE, Rajkot [2001(133)ELT 161(Tri), the Tribunal has upheld the Commissioner's finding that the marketing company is a related person of the manufacturer when mutuality of interest is clearly brought out through supervision and through financial transactions between the two.

4. The material on record is sufficient to bring out mutuality of interest so as to hold that the appellants (manufacturer) and its marketing company are related persons. We, therefore, uphold this finding and reject the appeals.