Premier Explosives Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-21-2003

Reported in : (2004)(92)ECC312

Judge : G B Deva, M T K.C.

Appellant : Premier Explosives Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. These are the four appeals filed by M/s Premier Explosives Ltd. against Order Nos. 74/99 (H-III) CE, 75/99 (H-III) CE, 76/99 (H-III) CE and 77/99 (H-III) CE all dated 10.9.99 passed by the Commissioner of Customs and Central Excise (Appeals), Hyderabad.

2. The issue involved in all these appeals is common. Therefore, they are being disposed of by this common order.

3. The fact in brief are that M/s Premier Explosives Ltd are manufacturers of prepared explosives. They clear the explosives manufactured by them by stock transfer to their depots and consignment agents on payment of duty on the basis of assessable value provisionally declared in the price lists in Annexure II, For the purpose of finalisation of assessments of RT-12 returns, the appellant furnished depot/consignment view particulars of sales made along with copies of sales invoices particulars "of transport charges incurred from their factory to

depot/consignment agents premises. The Superintendent Central Excise Warrangal II range after verification of the particulars finalised and assessment orders taking product cost plus handling charges as show separately in the invoices of depots/consignment agents as assessable value. He disallowed abatement towards freight expenses and turnover tax as these were not included in assessable value. On appeal, the Commissioner (Appeals) found that orders of superintendent finalizing the provisional assessment were correct in law and upheld the order.

4. In appeal petition it is pleaded that the assessment orders of the Range Superintendent which have been upheld by the learned Commissioner (Appeals) are liable to be set aside as the same are contrary to the provisions of Section 4 of Central Excise Act. In terms of Section 4(2) of Central Excise Act, 1944 where the price of excisable goods for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.

They had incurred expenditure toward freight or transportation of goods from factory to the depot/consignment agents premises- The turnover tax is payable/paid at the end of the year based on turnover for that year.

The same cannot be reflected in the price-list. The Provisions of A.P.Sales Tax Rules provide for payment of turnover tax by the appellants and it is not to be charged to the customers. They relied on the decision of CEGAT in the case of CCE Madurai v. DCW Ltd., 1998 (99) ELT 525 (T), Bangalore Paints Ltd. v. CCE, Bangalore, 2001 (132) ELT 396 (T) and Karnataka Soap and Detergents Ltd. v. CCE, Bangalore, 2001 (133) ELT 196 (T). It was finally pleaded that the orders of the Commissioner (Appeals) may be set aside.

5. During hearing Ms Zaria Kariappa Advocate emphasized that deductions would be allowed to them on freight incurred and on turnover tax paid by them. She pleaded that it is a well settled law that transportation charges from factory gate to depot and turnover tax are allowable deduction under Section 4 of Central Excise Act.

6. Shri L. Narasimha Murthy learned JDRappeared on behalf of the Revenue. He pleaded that in these cases, the orders passed by Commissioner (Appeals) are correct in law as he had passed the order on the duty liability calculated by the Range Superintendent on the basis of approved price-lists. At the relevant time, the assessee was required to file price list before the Assistant Commissioner and the Assistant Commissioner was required to give approval to the price list.

In all the price lists filed by the assessee, they have clearly mentioned that they are not claiming any deductions. The assessee has also not approached the Assistant Commissioner for allowing any deductions. Therefore, the Superintendent has worked out the duty difference on the basis of the duty payable on the cost of goods at the depot/consignment agents premises and the duty paid at the factory gate at the time of clearance of the goods. No deduction was claimed for freight or turn over tax in the price list nor these taxes are included in the assessable value on which differential duty was worked out. In Order-in-Appeal No. 75/99(H-III) CE the Commissioner (Appeals) has clearly mentioned that "........the appellants have not claimed these deductions in Annexure II. Further the scrutiny of invoices raised by the depot did not show the component of freight or turn over tax collected by them from the customers. The Superintendent also observed the depot have collected product cost, handling charges and Central Excise duty separately in the invoices raised by them. The Central Excise duty separately in the sales invoice is neither the actual amount already paid to the Department nor @ 20% adv. on the value collected at Depot. As such, the Range Superintendent has taken the value consisting of product cost, handling charges for calculation of Central Excise Duty payable @ 20% adv. It is, thus evident that the Range Superintendent has passed the impugned order after detailed scrutiny of the sales invoices raised by the Depot. The observations of the Range Superintendent have not been disputed by the appellants. Therefore, the order passed by the Range Superintendent cannot be faulted. It is correct both on facts and in law and does not warrant any interference." 7. We have carefully considered the submissions made by both sides. We find that the assessee had failed to establish that the duty has been charged on freight or turnover tax in the assessment order finalised by the Superintendent and upheld by the Commissioner (Appeals). We find that the appellate authority has held that Range

Superintendent has taken the value consisting of product cost and handling charge as shown separately in the invoices issued from depots/consignment agents premises for working out the duty payable. This has not been disputed before the Commissioner (Appeals). When no claim for any deductions has been made in the price list filed by the assessee nor any duty has been charged on freight and turnover tax, the question of claiming deduction on these does not arise. The duty liability was correctly worked out on finalisation of assessment and it was not disputed before Commissioner (Appeals). Therefore, we do not find any reason to interfere with the orders of Commissioner (Appeals) which are correct in law. We therefore, reject all the four appeals.