

Sound Tracks Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-23-2004

Reported in : (2004)(93)ECC522

Judge : S T S.S., K Kumar

Appellant : Sound Tracks

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants were registered with the Central Excise Authorities as a manufacturer of "Recorded Audio Cassettes" and was clearing the same on payment of Customs Excise Duty. The officers pursuant to an 'intelligence gathered' (SIC), visited the appellant's premises on 16.05.1997. It was revealed, after the checks, that basic raw material i.e. Pancakes (Magnetic Tapes), Plastic Bodies without magnetic tapes and inlay covers (I.C. Plastic Covers) were purchased by the appellants directly from the suppliers. The original sound track i.e. master copy of the programme and inlay cards were supplied by the various music companies, who reserved and owned the quality control and inspection rights. The entire production of a particular cassette programme was to be sold to the said music company and there was no liberty to the appellants, as an independent manufacturer, to sell audio cassettes to any other class of buyer. The music company had the right to reject the products. The relationship between an audio cassette and the music company could be established from the inlay cards of the audio cassette when these cassette came in the market. No stage the

relationship between the actual manufacturer and the product was established. The transaction/sale between the appellant and individual music companies was considered to be not at arms length and the price at which the appellants were selling the goods was not assessable value under Section 4 of the Central Excise Act, 1944. Therefore, it was viewed that the assessable value should be the wholesale price at which these goods were sold by the individual music companies to their dealers, as the music companies, while fixing the wholesale price of the cassette would have taken care of the expenditure incurred in making of master cassette. The value of the master cassette would generally include the cost of programmes, royalty, payment to the artists, studio charges and other incidental charges and these costs would be included in the prices of the products by the music companies to the ultimate buyers. A Show Cause Notice was therefore issued demanding duty of Rs. 2,06,902/- and proposing penalties under Section 11A of the Central Excise Act, 1944 read with Rule 173Q, 9(2), 52A(8) and Rule 226 and proposal to confiscation under Rule 173Q (2) was made along with interest and personal penalty under Rule 209A on S/Shri Manish L. Thakar and Jagdish N. Thakar.

a) In view of the later judgment cited in {1999 (119) ELT 770 (S.C.)} in the case of Gramophone Co. of India v. Collector of Customs, Calcutta, the earlier decision relied upon by the appellant in case of M/s. Prabhat Sound Studios (1996 (88) ELT 635 (S.C.)) is not correct and process carried on by the appellants amounted to manufacture under the Central Excise Act, 1944. It was also held that blank cassette and recorded cassette were distinct and different from recorded cassette, in characteristics, name and use and the process that transforms a blank cassette into recorded cassette rendering it a totally different commodity than the blank cassette.

b) The music companies had supplied master copy of the programme and inlay cards for the manufacture of recorded audio cassette and the price of the audio cassette therefore should have included the cost of the master copy, material supplied by music companies and royalty, etc and it was an admitted fact that the cost of inlay cards, royalty, average cost of the master cassette was not included in the assessable value. The price at which the recorded cassette was sold to the

music company did not reflect the true value of manufactured goods as the cost of master cassette, royalty and packing charges were not included in the assessable value. The appellants had already paid Central Excise duty on account of the cassette manufactured by them and by applying Rule 7 of the Central Excise Rules, the value should be included.

c) Board Circular No. 619/2002 CX dt. 19.02.2002 was relied upon and as the break ups, as submitted, were not supported by any documents and since the Profit & Loss A/c did not show any expenses incurred on royalty, inlay card, advertisement, selling and distribution, etc and that one of the music companies had given the cost of each master cassette at Rs. 300/-, that cost was taken and relying on Supreme Court decision in the case of Texanaco Ltd. (1995 (77) ELT 501} full intrinsic value of the goods arrived at when the demands confirmed along with the penalties on S/Shri M. H. Thakar and J. N. Thakar was discharged and no order of confiscation under Rule 173Q was passed.

3. After hearing the DR and considering the written submissions made by the appellants, it is found : a) The appellants rely upon the decision of the Supreme Court in Civil Appeal No. 238 (NM) of 1993 filed by M/s. Garware Plastics and Polyester Ltd. which set aside the CEGAT Order No. E/199/92-B1 dt.

07.09.1992 as reported in 1993 (67) ELT 670 (Tribunal). This decision will not assist the appellants since this is not a case simplicitor of video cassettes recorded being duplicated into another video cassette or/and recording or recording of an audio cassette, which were the subject matters in the case of M/s. Garware Plastics and Polyester Ltd. and M/s. Prabhat Sound Studios {1996 (88) ELT 635 (SC)}. The issue in this case is recording of an audio cassette tapes from the Pancake master copy of a programme supplied by the music companies, and the audio tapes so recorded are resulting in commercially different products known and understood in the market. The reliance of the later judgement in the case of M/s.

Gramophone Co. of India {1999 (119) ELT 770 (SC)} as arrived at by the Ld. Adjudicator would be the correct position in law, considering that is now a well settled that, if now commercially identifiable products come into existence as

understood by the people dealing with that, then the levy of Excise Duty under Central Excise Act, 1944 would be attracted (See Laminated Packings (P) Ltd. {1990 (49) ELT 326 SC}). In the present case Pancakes of magnetic master programme tapes are different from the consumer audio cassettes tapes. Therefore, the findings of the Commissioner as regards 'manufacture' under Central Excise Act to have taken place and duty liability is to be upheld. b) Relying upon the decision in the case of Collector of Central Excise, Bombay-II v. Music India Ltd. {1998 (97) ELT 171 (Tribunal)}, cost of development of master tapes is required to be included in the assessable value of the audio cassette. The appellants in this case are unquestionably 'job workers' and the position of valuation in this case of 'job workers' has being finally settled in the case of M/s. Ujagar Prints {1998 (38) ELT 535 (SC)}. In the present case the valuation has to be resorted to as per the formula prescribed by the Apex Court in the Ujagar Prints case. Since this decision was known and the issue settled, in the present case there was no inclusion of the vital costs of the Pancake magnetic master tape containing the programme, inlay cards and other items, these costs are required to be added. The larger period as invoked has to be upheld, since there is a mis-declaration of the values on which duty has been paid.

4. Before parting with this case, it would be relevant to observe that the cost of the Pancake master tape has to be amortized over the number of copies of the audio cassette tapes that have been made, as per the settled law on this subject. For this purpose, the demands of duty will have to be re-worked out. The demands as made cannot be upheld and the matter requires to be remitted for re-working out the demands.

5. Since demands have to be re-worked out; the penalties as imposed are set aside and the matter kept for re-determination of penalties, if any, after working out the demands in the denovo proceedings.

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