

**Eicher Limited Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-10-2004

**Reported in :** (2004)(97)ECC452

**Judge :** K T S.S., N T C.N.B.

**Appellant :** Eicher Limited

**Respondent :** Cce

**Judgement :**

1. The appellant is engaged in the manufacture of tractors. Its entire production is sold to its holding company. The dispute raised in these appeals is in regard to Central Excise Valuation of the tractors. The impugned orders have held that the sale price to the holding company should be rejected (being sale to a related party) and the sale price of the holding Company to unrelated parties taken as the assessable value. The orders have relied on the third proviso to Section 4(1)(a) of the Central Excise Act and definition of 'related person' in Section 4(4)(c) in passing the orders. Order-in-Original No. 3/AC/V/P1 dated 28.10.80 states as under: "4.11 have gone through the records of the case. The definition of "related person" has been given in Sub-section 4(c) of Section 4 of the Central Excise and Salt Act, 1944, which is reproduced below: "Related person" means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation: In this clause "holding company" and "relative" have the same meanings as in the Companies Act, 1956 (1 of 1956).

It has been clearly printed on the letters received, from the assessee that Eicher Farm Machinery Limited, Parwanoo is a wholly owned subsidiary of Eicher Goodearth Limited, M/s Eicher Farm Machinery Limited, Parwanoo are selling/transferring their entire production of their principal, namely, M/s Eicher Goodearth Limited.

Faridabad. In view of the definition of "related person", as given in Sub-section 4(c) of Section 4 of the Central Excises & Salt Act, 1944, I hold that M/s Eicher Goodearth Limited Faridabad are the related person to M/s Eicher Farm Machinery Limited, Parwanoo, and the Sector Officer Central Excise, Parwanoo has correctly asked them to file their price list in Part IV of the prescribed proforma".

2. The contention of the appellant is that a sale price is not to be rejected for the purpose of assessment merely for the reason that the sale transaction is between related parties. According to the appellant it is well settled that a fully commercial price between related person also can rightly constitute assessable value. During the hearing of the case, learned Counsel for the appellant relied in this connection on the decision of the Bombay High Court in the case of Ralliwolf Ltd. v. Union of India, 1992 (59) ELT 220 (Bom) and the decision of the Tribunal in the case of Renowned Auto Products Mfrs. Ltd. v. Commissioner of C.Ex. Chennai, 2003 (157) ELT 172 and Beacon Neyrpc Ltd. v. Commissioner of Central Excise, Madras, 2001 (133) ELT 590. The Counsel also took us through the show cause notice and pointed out that there was no allegation at all in the notice that appellant's sale price to its holding company was not a normal price or that there were any other considerations or factors affecting the price. As against this, the learned SDR has submitted that once the transaction is between related parties, that transaction value cannot constitute assessable value in the light of the decision of the Apex Court in the case of Flash Laboratories Limited v. Collector of Central Excise, New Delhi, 2003 (85) ECC 510 (SC) : 2003 (151) ELT 241 (SC). Learned SDR also pointed out that the decision of the Tribunal in the case of Renowned Auto Mfrs.

Ltd. is not attracted inasmuch as that order was rendered on noticing that there were sales to unrelated parties and those prices were lower than the sale price to the related party.

3. We have perused the records and have considered the submissions made by both sides. In the case of Ralliwolf Limited (Supra) the Hon'ble High Court of Bombay considered the scope of the special provision relating to sales to related persons. We read the relevant para in the judgment: "31. We are not inclined to accept the contention of the Department as submitted by Mr. Sethna, the learned Counsel appearing for the respondents for the following reasons: (a) that Section 4(4)(c) is a defining section of the expression "related person" and the said section must be read and seen in the context of third proviso to Section 4(1)(a). If one, therefore, reads the entire section, it is clear that three conditions are required to be satisfied before invoking the third proviso: Secondly, the price charged should not be normal price but the price lower to the normal price, and that extra-commercial considerations have reduced the normal price.

Thirdly, the alleged related person should be related to the assessee as defined in Section 4(4)(c) of the said Act. It is only if the above three conditions are satisfied, then alone it can be said that the third proviso to Section 4(1)(a) is applicable.

(b) The first part of the definition of related person as mentioned in Section 4(4)(c) of the said Act lays down that a person who is sought to be branded as a related person must be a person who is so associated with the assessee, that they have interest directly or indirectly in the business of each other. The inclusive part of the definition is merely an extension of the first part. Both the parts must be read conjunctively. If the argument of the learned Counsel for the respondent is accepted, then the word "and" which joins the two parts of the definition would be rendered meaningless. It is well-settled rule of interpretation that the Legislative mandate should be so read that no word used by the Parliament should be rendered nugatory. Reading the section as a whole it is clear that merely because a company is the subsidiary of holding company, ipso facto, it cannot attract Section 4(4)(c). It must be further established that each has interest in the business of the other. It must be further established that the transaction in

question is not based on principal to principal and that extra-commercial considerations have lowered the normal price. It is only then the third proviso to Section 4(1)(a) is attracted. The view which we have taken is also supported by the judgment of the Supreme Court in the case of Atic Industries (supra) as well as the judgment of the Supreme Court in the case of Moped India Ltd. v. Collector of Central Excise, 1986 (8) ECC 63 (SC) : 1986 (23) ELT 8". (emphasis added).

It is, thus, settled that unless "extra commercial considerations have lowered the normal price", the sale price between a holding company and its subsidiary can constitute normal value. The facts in question in Ralliwolf Ltd. and the present case were identical in that both the cases related to valuation of goods involved in sale transaction between holding and subsidiary companies. The legal position enunciated in the Ralliwolf Ltd., judgment does not seem to be over-ruled by the judgment of the Apex Court in the case of Flash Laboratories Ltd., (supra) inasmuch as that judgment also noticed the fact that the relationship between the parties had been affected by expenses incurred by the buyer for sales promotion and advertisement. We read para 7 of the judgment: "7. Having regard to the above decision and the plain meaning of the definition of "related person", it is to be noticed that the appellant is a subsidiary company of Messrs. Parle Products Limited and Messrs. Parle Biscuits Limited is also a subsidiary company of Messrs. Parle Product Limited. Therefore, the relationship between the appellant and Messrs. Parle Biscuits Limited though indirect, they have mutual interest in the business of each other. The facts and circumstances of the case show that there is mutuality of interest between the three companies as sixty percent of the products of the appellant are sold to Messrs. Parle Products Ltd. and the remaining forty percent of the total product of toothpaste is being sold to Messrs. Parle Products Limited. Moreover, Messers Parle Products Limited are incurring the expenses for sales promotion and advertisement for the sale of the appellant's product, namely, "Prudent toothpaste". (emphais supplied).

4. It is noticed in the present case that show cause notice has raised no allegation of any extra commercial relationship affecting the sale price, making the sale price lower than normal price. Thus, the facts of the present case do not warrant the rejection of sale price while assessing the goods to Central Excise duty.

5. In view of what is stated above, the impugned order is set aside and appeals are allowed with consequential relief, if any, to the appellants.

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