

**Birdi Steels Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/38034](http://sooperkanoon.com/38034)

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

**Decided On :** Feb-09-2005

**Reported in :** (2005)(179)ELT82TriDel

**Judge :** S Kang, Vice, M T K.C.

**Appellant :** Birdi Steels

**Respondent :** Cce

**Judgement :**

1. Heard Id. SDR. M/s. Birdi Steels made a request to decide the appeal on merits.
2. M/s. Birdi Steels filed these appeals against order-in-appeal whereby the differential duty is confirmed and penalties were imposed.
3. The dispute in this case is in respect of the valuation of the goods cleared by M/s. Birdi Cycle Industries. The demand was confirmed on the ground that the appellants were suppressing the value of the goods, which were cleared to their related persons. The Revenue produced the evidence that they were clearing the same goods at a higher value to the independent buyers. Therefore, the appellants were clearing the goods at a lower value to the related persons with intent to evade payment of duty.
4. The Revenue also filed appeal against the same impugned order for enhancement of penalty.

5. The contention of the appellant in their written submission that impugned order is a non-speaking order as no reason were given for rejecting the appeal filed by the assessee. The appellant relied upon the decision of the Tribunal in their own case where the Tribunal held that Rules 8 & 9 of the Valuation Rules are not applicable in the facts and circumstances of the case.

6. The Tribunal in the earlier case of the appellant relied upon the decision of the Tribunal in the case of Pepsico India Holdings (P) Ltd. v. CCE that the valuation of goods sold to or through related persons, the sale price of the goods which were cleared to unrelated persons is to be taken for assessment. The Tribunal held as under: It is the appellant's contention that Central Excise Rules, 2000 has no application to the present case and all the goods were required to be assessed at the price at which they were sold to unrelated buyers.

7. We find that it is an admitted fact that the appellants were clearing the same goods to their related persons at the price lower than the same goods were cleared to independent buyers. The adjudicating authority after taking into consideration the value of the goods at which appellants were clearing to the independent buyers confirmed the differential duty. These facts are not disputed by the appellant. As the factory gate price in respect of sale to the independent customers is available, therefore, the goods related persons are to be assessed at the same rate at which were cleared independent buyers cleared to the. As the duty was demanded after taking into consideration the same price to the independent buyers, therefore, we find no infirmity in respect of the demand of duty and imposition of penalty in the impugned order. The appeals filed by the appellants are dismissed.

8. In the appeal filed by the Revenue the only ground is for enhancement of the penalty. We find that in the case demand after taking into consideration the penalty of Rs. 30,000/- and Rs. 10,000/-is imposed. It is a settled position of law that the adjudicating authority has discretion to impose lesser penalty than the maximum prescribed under the law. In these circumstances, we find no merit in the appeal filed by the Revenue. The appeals are dismissed.