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Raymond Ltd. Vs. Commissioner of Customs and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-08-2005

Reported in : (2005)(190)ELT465Tri(Mum.)bai

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Raymond Ltd.

Respondent : Commissioner of Customs and

Judgement :

1. The appellants herein are engaged in the processing of goods falling under Chapter 62 and in the manufacture of goods falling under Chapters 51, 55, 62 & 63 of the Schedule to the CETA 1985 in their factories at Chhindwara, Thane and Jalgaon. They have centralized marketing department at Thane. They charged uniform price from buyers irrespective of place of delivery and place of manufacture of particular goods. They delivered goods from their different factories to their buyers situated throughout, by handing over to the goods to the nearest transporter. The cost of transporting the goods from factories to the nearest transporter was incurred by them and it formed part of the ex-works price. The aforesaid marketing pattern was continued by the appellants right from the year 1978 and throughout the period in dispute in the above appeals (period covered is June 1997 to December 1999). The appellants filed a Writ Petition No. 352/1983 before Hon'ble Bombay High Court challenging, inter alia, the levy and collection of duty on what was then known as post manufacturing expenses and post manufacturing profit. The levy of duly on four elements of expenses namely

(a) Commission to Agents,(b)Bonus to dealers, (c) Bank charges and (d) Freight and transportation charges, which are the subject matter of the present appeals, was also challenged. The High Court admitted the petition by its order dt.

21.12.1983 and directed the excise authorities having jurisdiction over the appellant's factory at Thane to provisionally assess the goods without including post manufacturing expenses and post manufacturing profit. The Writ Petition was disposed of by order dt. 19.7.1991 holding that appellants were entitled to deduction on account of the four elements of expenses mentioned herein above but dis-allowing deductions towards the following elements of expenses :- The assessees preferred Civil Appeal No. 474/91 before the Hon'ble Supreme Court against that part of the High court judgments; disallowing the above three deductions claimed by them; Revenue filed Civil Appeal No. 4041/92 before the Apex Court challenging that part of the judgment allowing deduction on account of four elements of expenses. Both the appeals came up for hearing on 9.1.1997. By two separate orders both dt. 9.1.1997, both the appeals were dismissed. In the order dismissing the Revenue's appeal, the Supreme Court observed that the Counsel for Union of India fairly conceded that the judgment of the Apex Court in Government of India v. MRF Ltd. reported in [1995 (77) ELT 433] squarely covered the case and that the findings recorded by the Bombay High Court while allowing the deductions under the heads bonus to dealers, commission to agents, freight and transportation charges and bank charges, are unassailable. Based on the above decision of the Supreme Court, the appellants started claiming the four admissible deductions from 1997 onwards. Show cause notice dt.

19.11.1998 was issued to the Chhindwara unit seeking to deny all the four deductions and proposing recovery of differential duty of Rs. 3,62,56, 142/- and proposing imposition of penalty under Rule 173Q of the Central Excise Rules and Section 11AC of the Central Excise Act.

Interest was also proposed to be charged under Section 11AB of the Act.

The period covered is June 1997 to September 1998. This notice was adjudicated by Commissioner's order No. 21/99 dt. 19.5.1999 confirming the entire duty demand and imposed penalty of Rs. 7,25,12,284/- upon the assessees. Appeal

No. E/2449/99 arises out of this order.

2. Show cause notice dt. 12.6.2000 was issued to the Thane unit proposing disallowing of the four deductions and proposing recovery of duty of Rs. 2, 19,13,107/- together with interest under Section 11AB and proposing imposition of penalty tinder Rule 173Q and Section MAC for the period covered in this notice i.e. June 1997 to December 1999.

The notice was adjudicated by Commissioner's order 26/01 dt. 9th October 2001 by which he confirmed the duty demand and imposed penalty of equal amount. This has given rise to appeal No. E/3850/01.

3. Show cause notices dt. 3.6.1999, 10.8.99, 9.12.1999 and 17.5.2000 were also issued to the Thane Unit for the period from November 1998 to December 1999 seeking to deny deduction on account of commission to agents and seeking to deny deemed credit facility as per Notification NO. 29/96CE dt. 3.9.1996 as amended Details of the notices are as under:Sr.No. SCN No. and date Period Amount (in Rs.) Differential Deemed1.

CEX/R- Nov.98 32,98,149 62,57,676 II/SCN/PME/99/29 -2.

CEX/R- Mar.99- 20,06,372 11,73,048 II/SCN/PME/99/61 June'993.

CEX/R- July.99- 40,69,138 2,86,734 II/SCN/PME/99/141 Nov.994.

CEX/RII/SCN/PME/99/16 Dec.99 3,08,583 6,320 dt. 17.05.2000 The notices also proposed imposition of penalty under Rule 173Q of the Central Excise Rules. These notices were adjudicated by Commissioner's order No. 27/01 dt.28.9.01, confirming demand of duty as raised in the notices and imposing penalties of equal amounts. Against this order the assessees have preferred appeal No. E/43/02.

4. We have heard both sides. The appellants heavily relied upon the judgment of the Hon'ble High Court, Mumbai in their own case in Writ Petition No. 352 of 1983 [1992 (57) ELT 396 (Bom.). In paragraph 4 (ii) the High Court has taken note of para 13 of the Supreme Courts judgment in Coromandel Fertilisers Ltd. v. UOI

[1984 (17) ELT 607 (S.C.) and has observed as under: "In our view, the ratio of the Supreme Court decision case have no application to the facts of the present case. In the facts of the case before the Supreme Court, the agreements which the appellants and with the selling agents clearly indicated the selling agents were being appointed as agents of the appellants for the sale of the appellants products. The agreement clearly provided that selling agents will secure orders on behalf of the appellants execute such orders on behalf of the appellants and will remain liable to the appellants for realization of the price of the goods sold to various parties and for such services rendered by the selling agents to the appellants the selling agents, would be entitled to Commissioner. In these facts, the Supreme Court held the facts, the Supreme Court held that the Commissioner which was paid by the appellants to the selling agents, was for the services rendered by them as agents".

5. The High Court did not find the circumstances present in the Coromandel Fertilisers case, in the Raymonds case. The period involved in the Writ Petition filed by Raymond Ltd. was 1981-1982, whereas the period in dispute in the present appeals is subsequent to 1997.

Further, the sales agreement between Raymonds and its agent was not before the Hon'ble Mumbai High Court, as it does not form part of the documents on which Raymonds relied in the Writ Petition, as seen from the additional paper book containing copy of the Writ Petition along with annexure. The list of documents relied upon before High Court's are various chartered accountants certificates and letters exchanged between Raymonds Ltd. and Central Excise Authorities.

6. During the hearing before us, in reply to a specific query from the bench, the Ld. Counsel for the appellants argued that for the period in dispute in the present appellants, the clauses of the agency agreement are identical to those in the present case of Coromandel Fertilizers case. The appellants have submitted that the Assistant Commissioner of Central Excise in his order dt. 16.3.84 has mentioned that the appellant's letter dt. 9.3.1984 contains some extract of Agency Agreement and copy of this letter is it Volume -III of the Additional Paper book. The Assistant Commissioner's order dt. 16.3.1984 records the letter dt. 9.3.1984

but does not mention anything about agency agreement. This further strengthen our view that the Hon'ble Bombay High Court had not considered the agency agreement in the Writ Petition decided by it.

7. Although the appeal of the Revenue against the Bombay High court judgment dt. 19.7.1991 in Writ Petition No. 352/1983 has been dismissed by the Apex Court. It is seen from the Supreme Court order that the Advocate for the Union of India has conceded the issue and the Revenue's appeal was dismissed as not pressed. It is well settled that the decision on the basis of a concession does not have precedent value. In the light of the above and in view of the Apex Court decision in Coromandel Fertilizers, we hold that the commission paid to selling agents for services rendered is not deductible from the assessable value.

During the period June 1997- 1998 Raymond Ltd. claimed deduction of Rs. 8.09 crores (representing 3.43% of net sales) whereas bonus of only Rs. 6.85 crores (representing 2.72% of net sales) was paid. We note that even in the Hon'ble Bombay High Court decision cited supra bonus was allowed an actual basis and the issue was remanded for determination of amount of bonus on actual basis.

The undisputed position emerging from the sales policy of the appellant is that no bank charges are payable by them and the same are on buyer's account. Further, prices are Free On Road (FOR) Ex Works. The appellants have conceded that for some period, they have wrongly claimed full amount of bank charges as deductions towards bank charges paid to the bank over and above the amount recovered from the buyers.

We agree with the Ld. DR that when sales policy states that such charges are on account of buyers, then no deduction of such charges should be allowed, for the reason that the appellants have legal remedy to recover their contractual dues from their buyers, and failure to exercise such remedy cannot result in a right to seek such deduction from the value. The reliance placed by the appellants on Tribunal's order in Vikram Detergent [2001 (127) ELT 641], holding that bank charges included in the price of goods on account of outstation cheques are not to be included in the assessable value, is misplaced as in the present case the prices are FOR -Ex works and the assessee has not produced any evidence to the effect

that the price includes bank charges.

The prices are on Ex-works price and on transportation charges are on account of buyers as per Sales Policy.

8. We therefore hold that bonus to dealers is to be allowed on actual and for this purpose the case is remanded to the jurisdictional Commissioner for re-working the duty demand; bank charges and interest and freight and insurance expenses arc not deductible from the assessable value.

9. Having regard to the fact that bonus to dealers is being held to be allowed on actual basis and also having regard to the fact that the demand in Appeal No. E/2449/99 is partly within the normal period of limitation and partly beyond the normal period of limitation (the appellants did not advance any arguments on the time bar aspect), we reduce the penalties as under:- [1] Appeal No. E/2449/99 - penalty under Section 11AC of the Central Excise Act, 1944 is reduced to Rs. 50 lakhs (Rupees Fifty Lakhs only) and penalty under Rule 173Q is set aside.

[2] Appeal No. 11/43/02 - penalty under Rule 173Q is reduced to Rs. 25 lakhs (Rupees Twenty Five Lakhs only).

[3] Appeal No. E/3850/01 - penalty under Section 11 AC is reduced to Rs. 30 lakhs (Rupees Thirty Lakhs only).

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