**Atul Ltd. Vs. Commissioner of Customs and**

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**SooperKanoon Citation** : sooperkanoon.com/39140

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

**Decided On :** May-20-2005

**Reported in** : (2005)(192)ELT412Tri(Mum.)bai

**Judge** : J Balasundaram, Vice, A M Moheb

**Appellant** : Atul Ltd.

**Respondent** : Commissioner of Customs and

**Judgement** :

1. The applicants manufacture goods falling under Chapter Heading 28 and 29 of the Schedule to Central Excise Tariff Act. One of the products namely Para-cresidine is sold to the applicant's sister concern. The dispute pertains to valuation of the product sold to the, sister concern. It has to be mentioned that the same product is sold to other un-related buyers as well. The Department seeks to adopt the price at which the goods are sold to unrelated buyers to the ones sold to the sister concern. The period in dispute is May 1996 to July 2000.

The show cause notice was issued on 30.4.2001. A part of the period is covered under normal period of limitation.

2. In the impugned order the lower appellate authority confirmed the demand for differential duty of Rs. 33,45,670/- and equal amount of penalty. The present application is for waiver of pre-deposit of duty and penally.

3. We observe that the period of dispute is covered under old Section 4 and the Valuation Rules 1975. The value is determined under Rule 6(b) of the Valuation Rules, which is applicable to goods valued under Section 41(b) of the Central Excise Act. During the course of argument it was urged that the present case was squarely covered by the decision of the Tribunal in the case of PEPSICO India Holdings (P) Ltd. [2004 (163) ELT 478] in which the Tribunal held that the special provisions contained Section 4(1) (a) (iii) are applicable in cases where goods are sold exclusively to or through related persons. There is no dispute that the above decision applies to such sales. In the impugned order the Commissioner did not invoke the special provisions contained in Section 4(1)(a) (iii) and it is surely not applicable to the situation before him. He determined the value under Rule 6(b) of the erstwhile Valuation Rules, 1975 which is applicable when the buyer and the seller are related-Value of goods under Section 4(a) cannot be determined when the buyer and seller are related to each other. In the present case the buyer and the seller are related as they are two deivisions of the same company with a common balance sheet, management etc. The price at which goods are sold to the related person can be rejected when a comparable price at which goods are sold to unrelated buyers are available. In regard to the contention that larger period of limitation is not invocable we observe that apart from the fact that a part of the period is covered under normal period of limitation of one year larger period of limitation appears to be applicable in the facts and circumstances of the case. The details in regard to this issue can be gone into when the appeal is taken up. There are other issues as well such as whether any adjustments were made while determining the value under Rule 6(b) of Valuation Rules which will be gone into at a later stage.

4. The applicant has not made out a strong prima facie case in his favour so as to waive pre-deposit of duty. We accordingly direct the applicant to deposit Rs. 8 lakhs within eight weeks of the receipt of this order and report compliance on 25.7.05. Upon such deposit further deposit of duty and the entire penalty is waived and recovery stayed.

Failure to deposit the amount as directed will result in dismissal of appeal without any further notice.