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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jun-23-2005

Reported in : (2005)(192)ELT609Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Bakelite Hylam Ltd.

Respondent : The Commissioner of Central

Judgement :

1. This is an appeal against the OIO No. 17/2002 dated 19.6.2002 passed by the Commissioner of Customs & Central Excise, Hyderabad-III Commissionerate.

The appellants manufacture Decorative Laminates at their factory at Hyderabad. The issue involved in the appeal relates to the valuation of Decorative Laminates. The appellants claimed that they clear the goods from their factory gate as well as through their depots, located all over the country. Upto 31.03.1994, the appellants had been clearing the goods after filing price list in Part-I based on the factory gate price. On amendment of Rule 173C w.e.f. 1.4.1994, the appellants started filing declarations claiming various abatements on the depot price in respect of goods cleared on Stock Transfer basis. There was protracted litigation with regard to the valuation of the goods and also the admissibility of various discounts claimed by the appellants. The CEGAT issued a Final Order dated 24.10.2000 remanding the matter to the original authority with the following observations: In view of our findings, we would remand the matter to the Commissioner after setting aside the

order with a direction that he shall first come to a clear cut findings of absence of a genuine ex-factory price on the basis of material produced by the Appellants and the material on record and apply such value. In case, he comes to a finding that such a genuine ex-factory price is not available, then he can proceed to determine the value by granting deductions from the depot prices available after giving an opportunity to the Appellants and applying the law on the subject of eligibility of various discounts. With these directions, appeals are allowed as remand for de novo adjudication.

Consequent to the remand order of the Tribunal, the Commissioner passed the impugned order dated 19.06.2002. In the above said order, the Commissioner confirmed a total duty demand of Rs. 1,61,81,601/- holding that there is no genuine ex-factory price. She imposed a penalty of Rs. 13 lakhs under Rule 173Q of the Central Excise Rules.

She held that the appellants are not entitled to (a) cash discount/sales rebate where not availed by customers; (b) abatement on account of interest on receivables; (c) abatement on freight on sales. She has not considered the plea of limitation. The appellants strongly challenged the impugned order.

3. Smt. L. Mythili, the learned Advocate appeared for the appellant and Shri R.N. Vishwanath, the learned SDR appeared for Revenue.

4. The learned Advocate emphasised the point that even though there were clearances from the factory gate, the adjudicating authority came to the conclusion that the factory gate price is not genuine but artificial on the ground that the percentage of factory gate sales is less than 3%. She said that there is absolutely no sanctity for the methodology adopted by the adjudicating authority. She has also not discussed the limitation. Hence, she requested that the matter may be remanded to the original authority.

5. The learned SDR agreed that the adjudicating authority has not considered the limitation aspect.

6. We have gone through the records of the case carefully. The adjudicating authority has come to the conclusion that the factory gate price is not genuine after taking into account the percentage of factory gate sales in relation to total sales. This is not a correct approach. The adjudicating authority should base her conclusion only on the basis of evidence. If any verification has been conducted to hold that the sales claimed by the appellant are bogus, then only one can hold that there is no factory gate price. The genuineness of the factory gate price is not dependent on the percentage. It is also seen that the adjudicating authority has not gone into the limitation issue.

Therefore, we have no other option but to remand the matter to the original authority. All issues are kept open. The original authority shall give the appellants a fair hearing and decide the issue in accordance with law within four months from the date of this order.

Z(Operative portion of this Order was pronounced in open court on conclusion of hearing)

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