Commissioner of Central Excise Vs. Bhor Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-21-2005

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Bhor Industries Ltd.

Judgement :

1. This is a revenue's appeal against the order of the Commissioner (Appeals). In the impugned order, the Commissioner found various infirmities in the order of the lower authorities, and allowed the appeal of the appellants before him. He narrated the infirmities as (a) the Assistant Commissioner has gone over board inasmuch as the allegation in regard to the "Related Person" was not made in the show cause notice and (b) Valuation has been done under Rule 6C(ii) of the Valuation Rules, 1975, which speaks of valuation of goods when a transaction is done between related parties. He held that the Assistant Commissioner has brought in the concept of the "related person" but has not substantiated in which way the appellants before him was related to Bhor Industries Ltd., Satara. He also observed that the appellants before him is a Limited Company and its buyer is another Limited Company and therefore, cannot be related.

3. The contention of the revenue is that the Commissioner was wrong in stating that the concept of a related party transaction has not been referred to in the order-in-original. Infact, the Assistant Commissioner confirmed the demand because he finds that the parties concerned were related to each other. The

revenue argued that the Commissioner was wrong in holding that Rule 6C(ii) of the Valuation Rules, 1975, does not come into reckoning.

4. We have gone through the appeal memorandum and the submissions made by the Id. DR. We find that the Commissioner was not correct in holding that the concept of related party transaction has not been referred to in the show cause notice. The whole demand is only in respect of the differential duty calculated on the value at which the goods are sold by the related party to unrelated buyers. However, the Commissioner also observed that the party's concerned are Limited Companies and therefore, they are legal entities in their own right. It is now a settled law that the shareholders in the limited companies are common cannot be a ground to say that the companies are related persons.

Further, during the course of hearing, it has also come out that the appellant does not sell all his goods to a related party. In such a situation, the price at which a related party sells the goods to unrelated buyers cannot be taken as value for the purpose of assessment. We hold that the Commissioner was correct in his finding that the two parties concerned i.e., Bhor Industries Ltd., Mumbai and Bhor Industries Ltd., Satara are not related persons. The revenue's appeal is accordingly rejected.