

Commissioner of C. Ex. Vs. Viacom Electronics Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-12-2005

Judge : A Wadhwa, N T C.N.B.

Appellant : Commissioner of C. Ex.

Respondent : Viacom Electronics Pvt. Ltd.

Judgement :

1. The Revenue has filed these appeals against this adjudication Order No. 9 to 12/BRC/MP/99, dated 26-3-99 passed by the Commissioner of Central Excise. The two manufacturers viz. M/s. Viacom Electronics Pvt.

Ltd. has filed cross-objections. Since the appeals and the cross-objections are directed against the same order, they were taken up together and are disposed of under this common order.

2. Material facts may be noted first. M/s. Viacom Electronics Pvt. Ltd. and M/s. Dixon Utilities & Exports Ltd. are manufacturers of Television sets. They manufactured and supplied colour Television sets to M/s.

Baron International Ltd. who marketed those T.V. sets through dealers.

The dispute is about valuation of the colour Television sets so marketed, during the period 16-9-97 to 31-5-98.

3. At the time of removal of sets from the factory, the assessable value of the Television sets was determined under Section 4A of the Central Excise Act. That Section provides for determination of assessable value based on Maximum Retail Price (MRP) affixed on the sets. In regard to the impugned T.V. sets the appellant-manufacturers declared the MRP as "RSP" (Retail Sale Price) and indicated prices, size wise, of the Television sets. It was also indicated that the RSP was on exchange ("U/E") (under Exchange) basis; for example, the RSP of 14" Television set was declared as Rs. 4990/- ("U/E") The duty was discharged on the assessable value obtained by reducing the abatement allowed by the department.

4. Dispute arose between the parties as to whether 'exchange price' could be treated as MRP. Accordingly, the assesses made addition of Rs. 4000/-(at the insistence of the Revenue) to RSP and after availing permissible abatement from such enhanced RSPs, assessable value was worked out and duty paid under protest.

5. Subsequently, show cause notices were issued alleging values adopted for original assessment were incorrect and that assessments were required to be carried out at much higher prices. The higher prices so adopted were the highest of the sale prices for each size of the Television sets in the retail market.

6. When the case was adjudicated by the Commissioner, the contention of the respondent was that, in addition to selling the Television sets under exchange scheme. It was submitted that since no objection could be raised to such 'clean' sales, the MRP for those goods should be adopted for the purpose of valuation of identical T.Vs cleared under exchange scheme. It was also admitted by Revenue that, as a matter of fact, such clean MRPs obtained in the case of two sizes of Television sets and the difference between the RSP for under exchange scheme and clean sales was Rs. 2000/- or less. Another contention was that, in view of the disputes about assessable value in respect of exchange sales of television sets by other Television manufacturer as well, the Consumer Electronics and Television Manufacturer Association (CETMA) had urged in a letter dated 25-9-98 to the Chairman of the CBEC that the average price found for old Television sets should be adopted for loading the RSP of Television sets sold on exchange. That letter

also indicated that an amount of Rs. 2000/- was the average price of second-hand Television sets in the Bombay market. The appellant, therefore, submitted that the MRP of exchange sale TVs be taken as printed RSP + Rs. 2000/- and duty liability determined accordingly. The Commissioner accepted this proposal, particularly since it was to revenue's advantage.

7. The main objection in the present appeal of the Revenue is to the determination of RSP by addition of Rs. 2000/-. During the hearing of the appeal, the Id. Counsel representing the Revenue has submitted that Rs. 2000/- was grossly inadequate particularly, in view of the finding that another company in the M/s. Baron International Ltd. group, namely M/s. Sprite Electronics Pvt. Ltd. (SEPL) was issuing uniformly bills for Rs. 3500/- in regard to each old Television set to the dealers. The bill for another Rs. 1000/- was being issued by M/s. Baron International Ltd. itself. The contention of the Id. Counsel for the Revenue is that the total of these two bills (Rs. 4500/- per set) would appropriately be the amount to be added to the RSP printed on exchange T.Vs, in order to work out the correct MRPs of those sets.

8. The Id. Counsel for the respondent would, however, submit that addition of Rs. 4500/- would be grossly incorrect. It is his submission that Rs. 4500/- did not at all represent the price of the old Television sets received during exchange by the appellant. If at all, it is the re-sale price of the old Television sets received during exchange sale. The second contention is that since old Television sets of many varieties had been returned by the purchasers, only an average price could be taken for the purpose of determining the commercial value of those sets. He has contended that since CETMA had ascertained an amount of Rs. 2000/- as average value of old sets, and Revenue had no evidence to the contrary, the Commissioner's finding that Rs. 2000/- is the average price cannot be doubted. He has also pointed out that before re-sale of the old sets, they would require to be attended to by way of repair, refurbishing etc. Further, warranty is also offered.

Another objection raised by the Id. Counsel against addition of Rs. 4500/- as canvassed by the Revenue is that, MRP so worked out, would go much above the MRP of comparable 'clean' sale identical sets. The contention of the Id. Counsel is

that, since Revenue has not disputed the MRP of identical clean sale T.V. sets, there is no ground for seeking assessment of exchange TVs under a higher MRP.⁹ Before going into a discussion of the contentions made before us, we may note the case made before the adjudication and the Commissioner's findings on the same.

In the written submissions as also during the course of personal hearing Shri Lakshmikumaran, learned Advocate for the notices, had argued that without prejudice to his submission that money value of the old CTV may be added to the declared RSP under the exchange scheme, the RSP declared by them for various models of CTVs for sale without any exchange scheme can be adopted as the basis for assessing the CTV sold under the exchange scheme also. Similar submissions were also made on behalf of the department by Shri Mahadeva, the learned Advocate for Revenue. I find merit in this argument advanced by the learned Advocate. If the CTVs are declared during the relevant period under both the schemes namely under the exchange scheme as also without the exchange scheme, it will be only fair that all the CTVs were declared under the exchange scheme are assessed to duty at the RSP at which such CTV were declared without the exchange scheme. If this is done, automatically cost of the old TV will find inclusion in the value of new CTV and it will not escape payment of duty. It will also eliminate the controversy as to what should be cost of the old CTV. I had asked jurisdictional Assistant Commissioner to verify the records and report whether same or identical models were declared both under the exchange scheme as well as under non-exchange scheme during the impugned period. The Assistant Commissioner reported that only 14W9 and 21W9 (as per the instruction manuals of 21W9, 21W9E & 21W9S are the same models only suffix having been introduced to make distinction between under exchange scheme and non-exchange scheme models), models of AKAI CTV were declared during the impugned period both under exchange as well as non-exchange schemes. That means the CTVs in the segments of 20", 25" and 29" screen size were not declared for sale under exchange as well as non-exchange schemes during the impugned period. In respect of 14" CTV it is observed that the price under exchange scheme was Rs. 4990/-. The same model was declared under clean RSP at Rs. 6990/-. Therefore, whether the RSP is enhanced by Rs. 2000/- due to

extra consideration for old CTV or the price under the non-exchange scheme is taken as the basis for assessment of duty, the end result remains the same. In case of 21" CTV the price under the non-exchange scheme was declared at Rs. 9000/- whereas under the exchange scheme the RSP declared was Rs. 7990/- for 21W9E and Rs. 8990/- for 21W9. If the amount of Rs. 2000/- is added to the declared RSP, it will be higher than the price declared by the manufacturer under the non-exchange scheme. In these circumstances addition of a sum of Rs. 2000/- as the money value of the old TV, to the declared RSP of the Akai CTVs would be more appropriate and acceptable proposition. In view of this, I am not considering assessment of CTVs cleared under the exchange scheme on the basis of the RSP declared under the non-exchange scheme.

Instead, loading of RSP by Rs. 2000/- towards monetary value of old CTV is beneficial to the department and provides the rational and Uniform basis for all the assessments. I, therefore, consider that it would be more rational to load the RSP of all the CTVs cleared under the exchange scheme by uniform amount of Rs. 2000/-.

10. Thus, both sides were in agreement before the Commissioner, that the MRP of outright (clean) sale sets could be adopted for the valuation of sets sold under exchange scheme. It is on record that such clean sales were available during the relevant period in the case of two sizes of Television sets. The difference in price was Rs. 2000/- in one case and Rs. 1010/- in the other. Commissioner adopted the higher amount for loading, being in pending work revenue's favour. Further CETMA had reported that Rs. 2000/- is the average price of a second-hand set. The issue required to be considered was whether such addition yielded the normal MRP and a correct basis for the valuation of TV sets sold in exchange. The Commissioner reached the conclusion that addition of Rs. 2000/- per set yielded the correct MRP. Revenue challenges the correctness of that decision. We are not able to find any merit in the Revenue's case. At no stage in the proceeding, revenue contended that the MRPs (RSPs) affixed on the clean sale, TV sets were incorrect. Revenue's counsel had accepted RSPs of out right sale sets would be acceptable basis for the valuation of the sets cleared under exchange scheme, because TV sets sold under both schemes were identical. The factor that vitiated

the RSP of sets sold in exchange is the value of the old TV set received in exchange along with the price in cash. That remains remedied by the addition of the value of the old set to the RSP. Evidence on record shows that addition of Rs. 2000/- per old set to the RSP would be to revenue's advantage inasmuch as it is the higher of the differential values and is equivalent to the average value of old TV set noticed. In this factual situation, the Commissioner was right in holding that an addition of Rs. 2000/- per TV set would be sufficient to obtain the correct MRP. There is no requirement of interfere with that finding.

11. The cross-objection of the respondent is in regard to valuation and is not pressed in view of our above finding on that issue.

12. Another grievance raised by the Revenue is in regard to the price of woofer. The Commissioner has found that, as a matter of fact, woofer is not a part of Television set and that they are being cleared and sold separately. That was the case, prior to introduction of assessment under Section 4A (MRP). The MRP based assessment is for Television set and not for its accessories. Those goods correctly merit valuation under Section 4 of the Central Excise Act. Therefore, this grievance of the Revenue is not sustainable.

13. The last grievance of the Revenue is in regard to stocks which had been seized during investigation. It is being pointed out that, upon a finding that the goods were not correctly valued, the Commissioner should have held the seized goods to be liable for confiscation and the respondent liable for penalty. We are not able to find merit in this contention of the Revenue. We find that full facts about the MRP had been declared by the appellant. The declarations before the Revenue authorities, clearly mentioned that the RSPs were for goods cleared under exchange. They also declared, contemporaneously, higher RSPs for clean sales. Thus, full facts remained disclosed in their relevant declarations. In such a case, if there is any short-levy, proceedings are required to be taken in terms of Section 11A of the Central Excise Act. Penal provisions have no place, when facts are fully disclosed and there is no intent to evade payment of duty. In the facts of the present case, confiscation and penalty are not attracted.

14. In the result, the order of the Commissioner is confirmed. The appeals of the Revenue and cross-objections of the respondent fall and are rejected.

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