Commissioner of Central Excise Vs. Poona Snuff Factory

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-22-2005

Judge : K Kumar, S T C.

Appellant : Commissioner of Central Excise

Respondent : Poona Snuff Factory

Judgement :

2. The Ld. SDR inter alia submitted that the issue relates to inclusion of cost of electric consumption, labour charges, transport charges & water charges in the assessable value; that the appellant has not included these charges in the assessable value on the ground that he has reduced the margin of profit; that Annexure A to the show cause notice shows that there has been consistent increase in the cost of these items whereas there is no change in the price sector as such it was incumbent upon the Commissioner (Appeals) to have included this charges in the assessable value; that the product in question is the tobacco related snuff and during investigation Manager of the appellant factory and its statement dtd 15/12/94 recorded before the Superintendent of the Range as admitted; that while arriving at the cost of goods and fixing the price of goods, the cost of transport charges from Excise Duty paid at Pune, factory expenses at Solapur and electrical and water and every expenses have not been taken into account. He admitted that there is difference in price of balance sheet & cost data i.e. price zone in the balance sheet is more than price of cost data of respective orders and the information given in cost certificate and price as per balance sheet

is not tallied. Therefore; the contention of the Ld. SDR is that for the purpose of assessable value the price as per Section 4(1)(b) of the Central Excise Act 1944 should have been taken.

3. The Ld. Consultant appearing on behalf of the respondents submitted that there is no proof with the department that the respondents has got any additional price, that the demand raised by the department is contrary to the cost data price list; that respondents has submitted the cost audited work sheet for each item claimed to be based on audited balance sheets, that the lower authority has not discarded these work sheets; that the average annual increase in cost by 12% appear to be reasonable and in tune with the market trends; that the respondents plea of maintaining level of prices for three years by reducing the profit percentage, merit acceptance; that there is nothing wrong if profit is reduced to maintain the price level; that this cannot be attributed to any under valuation; that this is not supported by evidence of any flow back or atleast market inquiries; that the goods are actually sold at higher prices than declared one; no such evidence had been adduced by the department to substantiate undervaluation so as to resort to costings; that the department has not proved their basis of costings; that the costing furnished by the respondents being based on audited balance sheet, the same could be accepted as a right basis; that both the units of the respondents work under the physical control of the proper officer of the department and over consignment was assessed before allowing removal.

4. After hearing perusal of the records the impugned order we find that while accepting the valuation under Section 4(1)(a). The Commissioner (Appeals) has clearly recorded that respondent has declared the prices to the department on actual selling price in wholesale trade and therefore the case was covered by Section 4(1)(a) of the said Act, that the department has accepted the price declared by the respondent under Section 4(1)(a) without any contest and as such, we do not find any reasons to interfere with the order passed by the Commissioner (Appeals). We therefore dismiss the appeal filed by the Revenue.