Super Electronics Vs. C.C.E.

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SooperKanoon Citation : sooperkanoon.com/41390

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-2006

Judge : S Kang, Vice, N T C.N.B.

Appellant : Super Electronics

Respondent : C.C.E.

Judgement :

1. Appellant is a manufacturer of CD music player. The present appeal is directed against a differential duty demand of about Rs. 1.4 lakhs in regard to 206 pieces of model 'TMC-400' cleared by the appellant during the period December 1994 and January 1995. The differential duty demand has been made on the ground that, according to the price declaration filed by the appellant before excise authorities, the normal price of a set was Rs. 8,333/-while the 206 pieces in question were cleared after payment of duty on a price of Rs. 5,000/- per set.

2. The explanation of the appellant all along was that the 206 pieces were accumulated stock and had some defects and were therefore sold to M/s Alpine Industries, a dealer, at the agreed price of Rs. 5,000/-.

This explanation of the appellant was not accepted by the revenue partly for the reason that in terms of Section 4 of the Central Excise Act, value is the "normal price" at which "such goods" were sold and also that proof was not produced about the defective nature of the goods.

3. The contention of the learned Counsel for the appellant is that revenue has not produced any material to show that price charged for the sets in question was not the normal price or that it was a favoured non-commercial price. There is also no evidence to show that the goods were not accumulated/defective stock. Learned Counsel has also submitted that 'normal price' of a consignment is the price fetched in a commercial transaction and such a commercial price has to be accepted for valuation. He has also relied upon the decision of the Tribunal in the case of BOC India v. C.C.E., Mumbai II - 2005 (124) ECR 101 in support of this contention.

4. We have perused the record and heard the learned SDR also. On the question of sale at a price lower than the declared price and its effect on duty this Tribunal has held as under in the case of BOC India: 6. In the present ease also it is true that the appellant made a declaration regarding the value of goods but it sold the goods manufactured by it at a lesser price shown in the invoice. The Department has not disputed that the price shown in the invoice was not correct nor had there any case that any amount over and above the amount covered by the invoice flow back to the from the buyer.

Under such circumstances, the price at which the goods were sold to the others was the sole consideration for the sale as contemplated by Section 4(1)(A) of the Act and, therefore, the Department was not justified in claiming the differential duty on the basis of price declaration.

5. In the present case, there is no evidence contrary to the appellant's submission that accumulated/defective stock was sold at a lower price Sale also is to an unrelated dealer. It is well known that accumulated/defective stock fetched a lower price than fresh goods.

Therefore, there is nothing in law or in the facts of the case justifying the view that duty should have been paid at the price of fresh goods even in regard to goods sold in clearance. Differential duty demand, is therefore, not justified in fact or in law. The same is set aside and the appeal is allowed with consequential relief, if any, to the appellant.