Tony Electronics Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-2006

Reported in : (2006)(106)ECC273

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

Appellant : Tony Electronics

Respondent : C.C.E.

Judgement :

1. The appellant is a manufacturer of Video Magnetic Tapes (VMT) and Blank Video Cassettes (BVC). These goods are liable to central excise duty on ad valorem basis. When they cleared the consignment they discharged duty based on the sale price. The period of dispute is 1996-97 to 1999-2000. Under the impugned order, it has been held that the goods were required to be valued based on cost of production and duty discharge based on such valuation. This finding is under challenge in the appeal.

2. The contention of the learned Counsel for the appellant is that in terms of Section 4 of the Central Excise Act, duty liability was on the normal price at which the goods are sold in wholesale to buyers. It is being pointed out that appellant's sales were to independent wholesale buyers and the sale price was the sole consideration, Counsel would contend that the impugned order has shown no reason, for rejection of the sale prices and therefore, the basis of the valuation order in the impugned order is contrary to settled law. Reliance in this connection

is placed on the judgment of the Hon'ble Supreme Court in the case of C.C.E., New Delhi v. Guru Nanak Refrigeration Corporation 2003 (153) ELT 249 (SC).

4. Clearly, the finding is a misdirection. The basis for valuation of excisable goods is the normal price at which the goods are sold. Only if such a sale price is not available, valuation based on cost of production arises. This position remains settled by the ruling of the Hon'ble Supreme Court in the case of C.C.E., New Delhi v. Guru Nanak Refrigeration Corporation. We 5. A perusal of the show cause notice shows that it does not contain an allegation that the wholesale price to the buyers was for consideration other than the one at which it purported to be sold or that it was not at arms length. There is also no allegation that there was any flowback of the money from the buyer to the assesses.

In the absence of these factors it cannot be contended that normal price was not ascertainable. There is no valid reason to doubt the genuineness of the sale price. It can therefore be safely be concluded that the goods were sold at the normal price within the meaning of Section 4(1)(a) of the Act. In our view, the Tribunal is right in accepting the wholesale price as the correct price following the judgment of the Court in Union of India and Ors. v. Bombay Tyres International Ltd. etc. 1983 (14) E.L.T. 1896. We hold that Clause (b) of Sub-section (1) of Section (4) of the Act would not be attracted to determine the nearest ascertainable equivalent of the normal in price of the goods for assessment of excise duty in the facts of this case. We do not find any illegality in the order of the Tribunal in setting aside the order of the Collector. The appeal is therefore dismissed. No costs.

5. In the present case also, there is no ground shown for rejecting the transaction values. No case is being made that the transaction values were not the prices at which the goods are actually sold or transaction values are to be rejected because of an exclusion provision such as the one for transaction between related parties. In view of this, the re-valuation order cannot be sustained.

6. In regard to VMT, the revenue has taken a view that different values, based on the grade of the tape, is not acceptable. The only reason for this is that, until the goods became liable to duty on ad valorem basis (1.3.94), the appellant was not keeping separate entries, grade wise, in statutory excise records (RG-1). It is

therefore, held that subsequent grading is only to evade duty. The submission of the learned Counsel is that the goods were being graded even when they were liable to duty at specific rates. It was only that since such grading was not relevant for the purpose of excise duty only one combined entry was made in production records. The appellant has also explained the basis for grading. No evidence has been produced by the revenue to challenge the appellant's claim or any material found which would show that there was either no grading or grading was only a device for collecting receipts outside the books of account. In these circumstances, the contention raised regarding grading is not sustainable.

7. In the findings reached above, the impugned order is set aside and the appeals are allowed with consequential relief, if any, to the appellant.