

Commissioner of Central Excise Vs. Mukat Tanks and Vessels Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-16-2006

Reported in : (2007)(114)ECC47

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Mukat Tanks and Vessels Ltd.

Judgement :

2. The issue relates to under valuation on account of sales being not at arms length being related person. After hearing both sides on perusal of the records and the case laws relied on, we find that the show cause notice was issued for related persons and sale not being at arms length. Additional Commissioner, after adjudication found that the charge relating to related persons only deserves to be upheld and no findings were arrived at by him with regard to confirmation of charge of arms length. No appeal was taken by the Revenue against the order passed by Commissioner (Appeals) in this regard. The Commissioner (Appeals), has only dealt with the charge of related persons. He has found that there is no share holding or subsidiary professional relationship between the directors. The contention with regard to Common Directors resulting in related person cannot be held in view of the Supreme Court decision in the case of Alembic Glass Industries Ltd. v. Collector of Central Excise & Customs In our view, this is the heart of the matter. The shareholders of a public limited company do not, by reason only of their shareholding, have an interest in the business of the company.

Equally, the fact that two public limited companies have common Directors does not mean that the one company has an interest in the business of the other. It is, therefore, not possible to uphold the conclusion of the Tribunal that the assessee and the chemical company were related persons. This being so, it is unnecessary to go into the alternate arguments advanced on behalf of the assessee.

3. Similarly Ld. Counsel also relied on the decision in the case of BESTA COSMETIC LTD reported in 2005 (183) E.L.T.132 (S.C.) wherein Supreme Court in para 4 has held as under: As far as the common Directors are concerned, this Court has in Alembic Glass Industries Ltd. v. Collector of Central Excise & Customs The fact that two public limited companies have common Directors does not mean that the one company has an interest in the business of the other.

I have carefully gone through the entire case regards. The records do not bring out any evidence to show any flow back and any additional consideration for the said sale of the semi-finished M.S. Pipes from the appellants to M/s Surindra Engg. Co. Ltd. The evidence available does not establish that the supply of semi-finished pipes from the appellants to their associate concern M/s Surindra Engg. Co. (P) Ltd. The evidence available does not establish that the supply of semi-finished pipes from the appellants to their associate concern M/s Surindra Engg. Co. (P) Ltd., is not a sale within the purview of Section 4(1)(a) of CEA, 1944 and as to why the valuation of the goods is required to be done under Section (1)(a) of CEA, 1944 and as to why the valuation of the goods is required to be done under Section 4(1) of CEA, 1944 and as to why the valuation of the goods is required to be done under Section 4(1)(b) ibid read with Rule 6(b)(ii) of the Valuation Rules, 1975.

As such, I proceed to decide the appeal by waiving the pre-deposits.

Considering various aspects and the decisions cited in this regards I hold that the evidence available on record does not prove the undervaluation of the goods in question the burden for which rests solely with the department. Accordingly the OIO passed by the Addl.

Commissioner is set aside and appeal allowed.

5. In view of above factual and legal position, we do not find any merit in the appeal filed by Revenue. The Revenue's Appeal is dismissed.

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