

Cce Vs. Liberty Shoes Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-20-2007

Reported in : (2007)(121)ECC104

Judge : N T C.N.B., P Das

Appellant : Cce

Respondent : Liberty Shoes Ltd.

Judgement :

1. The respondent is a known manufacturer of different varieties of foot wear that including many varieties of shoes. The subject of dispute in the present appeals of the revenue is the valuation of shoes sold to institutional buyers.
2. Section 4 of the Central Excise Act, 1944 is the main provision relating to the valuation of excisable goods which are subject to advalorem rates of duty. The criterion for valuation under that section is the transaction value between the manufacturer and the buyer. An exception to this scheme is Section 4A of the same Act which provides that goods specified by the Central Govt. and which are required under the Weights and Measures Act and rules to print MRP on retail package shall be valued for duty purposes based on the printed MRP, minus abatement notified for a particular product by the Govt.
3. Foot wear is an item specified under Section 4A, Therefore, the respondent cleared the shoes sold by them to all buyers, including institutional buyers, after

paying excise duty based on the printed MRP based value. Thus, the valuation was made under Section 4A. However subsequently, SCN was issued contending that the valuation was required to be done under Section 4 of the Act in-as-much as there was no retail sale involved when bulk sales are made to institutional buyers. In adjudication, this view was upheld and duty demand was confirmed. But when the matter went before Commissioner (Appeals), he noted that the shoes in question also had MRP affixed on them and therefore, they were also required to be assessed under Section 4A. He specifically noted that the clearances were not under Rule 34 of the Weights & Measures Rules which exempted supplies of materials in bulk from the operation of Weights and Measures Act. The Commissioner (Sic) also noted the relevant case law on the subject, while passing the order. The present appeal of the revenue contends that the order of the Commissioner is incorrect.

4. The submission of the Ld. SDR is that Weights & Measures Act contemplated retail sale and the sales in question were purchased by institutional buyers for free supply among their employees, question of retail sale does not arise. He has also contention that these are shoes specifically manufactured for the institutions in question and therefore, they are not the shoes normally produced by the respondent.

5. Ld. Counsel for the respondent has taken us through the orders and sales invoices and emphasized that the shoes under sales were the shoes manufactured by the respondent assessee under different brands like 'Windsor', 'Tiptop' etc. and that these shoes were not specifically manufactured for the institutional buyers. He would also point out that the actual disposal of any given consignment is not a relevant consideration for the purpose of valuation. According to the Ld.

Counsel, it is well settled that the requirements under Section 4A are that the goods in question must be covered by the Weights & Measures Act and rules, MRP should be marked by the manufacturer on the goods and supplies should not fall under the exemption in Rule 34 of the Weights & Measures (Package Commodities) Rules. It is being pointed out by that all these requirements remain

satisfied in regard to the goods in question. Foot wear is an item specified under Section 4A, it is covered by Weights & Measures Act and Rules, the foot wear had MRP marked on them and the supplies were not exempt under Rule 34. He would rely on the decision of this Tribunal in the case of BPL Telecom (P) Ltd. v. CCE reported in 2004 (60) RLT. 664 in support of the contention that a bulk sale under a contract price to institutional buyers do not go outside the scope of valuation under Section 4A. He also points out that the Commissioner has correctly relied on the decision of the Tribunal in the case of CCE, New Delhi v. Ishaan Research Lab.

8. A perusal of the record makes it clear that the appellant's supplies were not excluded from the operation of Weights and Measures Act and Rules. The sales were of various branded shoes manufactured by the appellant. MRP had been marked on them. Section 4A stipulates that valuation of such notified item cleared with MRP printed on the goods would be in terms of MRP minus abatement and that provisions of Section 4 of Central Excise Act would not apply. We have held in the case of BPL Telecom (P) Ltd. that bulk supplies to large consumers also would be liable to valuation under Section 4A.9. The order of the Commissioner is in conformity with the provision of Section 4A and the decision of this Tribunal. There is no error or illegality about it. In the result, appeals of the revenue fail and are rejected.

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