

Collector of Central Excise Vs. Vikrama Engineering Company

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-24-1988

Reported in : (1989)(20)LC184Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Vikrama Engineering Company

Judgement :

1. The Respondent is not represented today. He had sent a letter dated 31.8.1988 to the Registry in which he noted the date of hearing fixed for today and stated that he would take further action on receipt of a copy of the "Revision Application". By "Revision Application" perhaps he meant the reference letter sent by the Appellate Collector to the Central Government for initiating revision proceedings under the then Section 36(2) of the Central Excises and Salt Act, 1944. The Appellate Collector sent him a copy of his said letter-dated 14/15.4.1980 on 29.8.1988. However, the Respondent is still not represented even though he was duly notified of the date of hearing and he was well aware of it. There is no request for adjournment on record. In the circumstances, the Bench decided to take up the hearing and disposal of this appeal on merits.

2. We have heard the Ld. Representative of the Department and have perused the record, particularly the written submissions made by the Respondent in reply to the Central Government's Revision Show Cause Notice dated 30.5.1980 aforesaid, 3. The controversy relates to the price list No. 13/76 which the Respondent filed before the Assistant Collector on 20.8.1976. The Respondent

company was at that time a proprietary unit. The unit manufactured Motor-Vehicle Trailers. The proprietor of the Respondent company was also the Kartha' of the Hindu Undivided Family which owned the agency company named M/s. Vikrama Engineering Company (Agency). It appears that In general the manufacturing unit disposed of the Trailers manufactured by through various agents/dealers and the HUF owned agency company was one; of them The Respondent has been contending that 95% of the business was done through other agents/dealers and only about 5% business was done through the HUP owned company.

4. The Revision Show Cause Notice states that among the various types of Trailers manufactured by the Respondent Unit, the following type was disposed of only through the HUF owned agency company and, therefore, it should be held that this model was disposed of by the Respondent through a 'related person; "Vikrama Double Axle Four Wheeler 6.8 Metric Tonnes gross load capacity; non-tipping Trailer, of body size 12' x 6' x 2', with steel hubs, 45" (11 and 3 blades) springs parking brakes and fitted with 715 x 16.10 ply light truck tyres and painted".

The Respondent does not deny that the above model of Trailers was disposed of only through the agency company and the agency company was given 10% discount on the sale price of each Trailer. The contention of the Respondent is,, and this is also the view of the Appellate Collector, that it was just a coincident that the orders for the above particular model came only through the agency company. The Respondent makes a hypothetical statement that if other agents/dealers had also placed orders for the aforesaid particular model, they too would have been given the same 10% discount The Respondent also contends that mutuality of business interest was not established just because the proprietor of the manufacturing unit was also the Kartha' of the HUF owned agency company. The Respondent pleads that the manufacturing unit and the agency company were two physically separate entities and were separately assessed for income tax, sales-tax etc.

5. On careful consideration, we find that the controversy regarding the meaning of 'related person' has since been settled by the judgment of the Hon'ble Supreme

Court in the case of Bombay Tyres International Ltd. [1983 E.L.T. 1896 (SC)]. According to the Supreme Court judgment, for the first part of the definition of 'related person' in Section 4(4)(c) of the Central Excises and Salt Act, 1944, mutuality of interest should be there between the two units and for the second part of the said definition, the Distributor should also be a relative of the assessee. We find that the case of the Respondent fits in both parts of the definition of 'related person' in Section 4(4) (c). The assessee unit was solely owned by a person who, as Kartha of the HUF, had also interest in the agency company. He was the guiding and controlling force behind both the units. The others in the agency company were his close relatives. It was he who managed the affairs of both the units and he had interest in both of them. The fact that the agency company was separately assessed for the purposes of income-tax and sales-tax is of no consequence under Section 4(4) (c) of the Central Excises and Salt Act, 1944. Under the central excise law, a Hindu Undivided Family, unlike a limited company, did not have a distinct legal entity of its own nor could the members of HUF be equated with shareholders of a limited company. Further, under Section 4(4)(c), the degree of mutual interest is not material. The existence of some interest is all that is required [1984 (17) E.L.T. 323 (SC) U.O.I. v. Atlc Industries Ltd.] and that was there in the two units. In fact, the setup was such that there was identity of interest as between the two units. For reaching this conclusion, we rely on the judgment of the Hon'ble Supreme Court in the case of Mohanlal Maganlal Bhavsar v.U.O.I. [1986 (23) ELT3 (SC)]. The case also came under the second part of the definition because other members of the HUF owning the agency company (the distributor) were all dose relatives of the proprietor who owned the manufacturing company and the said proprietor was also the Kartha of the distributor unit. This was clearly a case of the distributor being also a relative of the assessee.

6. Beyond this point, however, the facts of the case are not clear.

Unfortunately, the Respondent himself has also added to the confusion.

In paragraph (14) of his reply dated 28.6.1980 to the Revision Show Cause Notice, he stated that 'the agency company has sold the goods at the price at which we would have sold the goods direct to the users'.

This gives an impression that the agency company first purchased the goods from the Respondent unit and then resold them. However, in paragraph (6) of the same reply, he stated that the agency company as well as his other 'dealers' functioned only as his commission agents and for their service in booking orders for the Respondent's goods the Respondent allowed them a uniform 'discount' of 10%. We reproduce below the Respondent's own assertion : "We have no wholesale trade with any other dealer in the sense used in Section 4 of the Central Excises and Salt Act, 1944. In addition to what we sell to direct users, we also sell a part of our goods through some authorised dealers located at various places in the South. There is no territorial jurisdiction marked for any of these dealers. They book orders mostly from agriculturists and tractor owners for our Trailers and after the Trailers are supplied they also attend to after sale servicing etc. For their service in booking orders for our trailers, we allow these authorised dealers a uniform discount of 10%".

If the fact was as stated above by the Respondent, there was no actual sale of Trailers by the Respondent to the 'dealers', the 'dealers' were only his agents and the so-called 'discount' of 10% was only agent's commission given to them for booking orders for the Trailers. Such commission is not deductible as a trade discount under Section 4, vide 1984 (17) E.L.T. 607 (SC) M/s. Coromondal Fertilisers Ltd. 7. It is also not clear as to whom the 'dealers' and the agency company disposed of the Trailers whether to direct users or to wholesale dealers. Further, there is nothing on record to Show whether the particular model of Trailer covered by pricelist No. 13/76, which is in dispute here, had been offered by the Respondent to all his 'dealers' or only to the agency company. The record is silent on detailed facts.

The Respondent is not present to clarify and the Ld. Representative of the Department has no information available. For a proper disposal of this case, it is very necessary to find out the correct facts first.

The problem is not solved just by declaring that the agency company was a 'related person'. If, in fact, the Respondent sold the Trailers in wholesale to the agency company as well as to other 'dealers' at a uniform price, the fact of the

agency company being a related person' would not be material because, in that case, the normal price under Section 4(1) (a) (that is the uniform wholesale price charged to other independent dealers) would be ascertainable and the sales made to the agency company would also be required to be assessed at the said normal price only. If, however, the agency company and the so called dealers' were only agents who booked orders for the Respondent, the nature of disposals of the Trailers would determine the valuation. If the actual sales made by the Respondent, on the basis of the orders booked by the agents, were to wholesale dealers, the sale price charged to wholesale dealers would constitute the normal price under Section 4(1)(a). If, on the other hand, the disposals were to direct users in retail, the assessable value would have to be determined as per Rule 6(a) of the Central Excise Valuation Rules, 1975 after giving reduction of reasonable sale expenses from the retail price so as to make it a notional wholesale price.

8. The Respondent does not deny that all disposals of the particular model in dispute were only through the agency company. However, he calls it a coincident. His version would be acceptable only if he can prove that he genuinely offered this model to all other dealers also at the same price. Otherwise, it would be reasonable to conclude that this particular model was, by design, marketed only through the agency company which was a related person' of the Respondent. In that event, the value would have to be determined in terms of proviso (iii) to Section 4(1) (a) or in terms of Rule 6(c) of the Central Excise Valuation Rules, 1975, depending upon the fact whether the further disposals by the 'related person' were in wholesale or in retail.

9. We have had to discuss the principles of valuation in detail in the preceding paragraphs because we observe that the Assistant Collector proceeded on the assumption that once the agency company was declared to be a 'related person', that was the end of the matter and all that was required to be done was to assess the goods sold to the agency company at the full price without allowing any discount or deduction whatsoever and the Revision Show Cause Notice also proposed to restore the Assistant Collector's order. For correcting the impression of the lower authorities, we reiterate that if normal price of the goods was ascertainable independently of the sales made to the 'related person', then all the

removals would have to be assessed at that normal price and, if the acceptable sales were really sales in retail only, even then the assessee would be entitled to reduction of reasonable sale expenses under Rule 6(a)/(c) of the Valuation Rules.

10. In the result, we set aside the impugned Order-in-Original as well as the Order-in-Appeal and remand the matter to the Assistant Collector for a fresh decision in accordance with law and judgments of the Hon'ble Supreme Court. Needless to say, the Assistant Collector should arrive at the fresh decision after ascertaining, as far as possible at this late stage after the lapse of nearly 12 years, the correct facts and after a due hearing to the Respondent.

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