

Bajaj Electronics Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-19-1990

Reported in : (1990)LC274Tri(Delhi)

Appellant : Bajaj Electronics

Respondent : Collector of Central Excise

Judgement :

1. We heard Shri Gopal Prasad, the learned Consultant in support of the appeal. According to him the issue involved in this matter is what should be the value for purposes of assessment of Central Excise duty when out of seven distributors two are alleged to be related persons.

Shri Gopal Prasad in this context made the following submissions: (i) Without conceding but assuming that two of the distributors are related persons and the other five distributors are still there and the price at which the goods are sold to them (the same price to the two distributors) is the assessable value.

(ii) Merely giving a warranty does not make the distributor a related person of the assessee.

(iii) A distributor is not automatically a related person unless he is a relative [Union of India and Ors. v. Bombay Tyres International Ltd. and Ors. -1983 (14) ELT 1896 (SC)].

2. Shri Gopal Prasad submitted that in his letter dated 28-5-1979 to the Assistant Collector he disclosed the names of all the distributors and the pattern of sales. He submitted that in these circumstances, price list No. 2/79 as filed by the appellants should form the basis of assessment.

3. Smt. Baliga, the learned SDR while accepting the legal position submitted that the factual position needs to be verified as to whether the seven distributors whose particulars were stated to be given to the Assistant Collector and to the Collector (Appeals) were in fact existed and were actively dealing with the appellants. She also invited the attention of the Bench to Proviso 3 to Section 4(ii) and submitted that unless the sales to independent distributors were reasonable in quantities, an adverse inference has to be drawn.

4. The learned Consultant reiterating the facts submitted that in terms of the judgment of the Bombay High Court in Cosmos (India) Rubber Works P. Ltd. v. Union of India 1988 (36) ELT 102 Bombay the language of the proviso 3 would apply only if all the goods are sold to related persons. Questioned by the Bench, the learned Consultant was not readily able to inform the actual percentage of sales through the two distributors alleged to be related persons and the other five.

5. The position of law in this matter is quite clear. If the appellants have an unimpeachable sales through the 5 distributors and the price to these 5 distributors is the same as also to the two distributors alleged to be related persons such price should form the basis for assessable value. We do not have all the relevant facts before us. We set aside the impugned order which has taken a contra view and remand the matter to the Assistant Collector with the direction that he should verify: (iv) that the price at which the goods were sold to the 5 distributors was the same as the price to the two distributors alleged to be related persons.

6. If on verification these are found to be the facts, the classification list No. 2/79 should be approved allowing the discount of 10% as also the price mentioned therein. The appellants may produce necessary documents like particulars of sales and copies of some invoices before the Assistant Collector to verify the sales. If the Assistant Collector finds that the appellants' goods are being sold to

all the seven distributors at the same price necessary relief should be extended to them by the Assistant Collector himself.

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