

Collector of C. Ex. Vs. Voltas Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-08-1990

Reported in : (1991)(53)ELT82TriDel

Appellant : Collector of C. Ex.

Respondent : Voltas Ltd.

Judgement :

1. This appeal arises out of the show cause notice dated 3-9-1982 issued by the Government of India under the provisions of Section 36(2) (as it then existed) of the CESA 1944, seeking to review the order of the Appellate Collector by which the price of sales by the respondents herein to their sole distributors Voltas Limited, was held to be the correct price in accordance with Notification No. 120/75 dated 30-4-1975. The assesseees were manufacturing excisable goods falling under T.I. 68 CET and opted to pay duty on the invoice price in terms of Notification No. 120/75. The adjudicating authority held that condition (iv) of Notification No. 120/75 had been contravened inasmuch as Voltas Limited was a "related person" and the prices to Voltas were influenced by commercial relationship in the business and he accordingly ordered assessment according to Section 4 value. The Appellate Collector set aside the order of the Assistant Collector holding that Voltas Limited was not a "related person" and allowed the appeal with consequential relief. The Government of India issued a notice under Section 36(2) proposing to set aside the order of the Appellate Collector and order assessment on the basis of normal price under Section 4. These proceedings

have been transferred to the Tribunal and treated as an appeal before us.

2. At the outset, Shri A.N. Haksar, learned advocate for the respondent, raises a preliminary objection of limitation - he submits that the notice dated 3-9-1982 seeking to order assessment under Section 4 value is time-barred, having been issued beyond a period of 6 months subsequent to the date of the order of the Appellate Collector.

We have heard both sides on this preliminary point.

3. From the records, it is seen that the respondent had been clearing goods, paying excise duty on the basis of invoice value in terms of Notification No. 120/75. From 4-1-1979 onwards, duty on the basis of Voltas' invoice price was paid under protest. A show cause notice was issued on 4-9-1979, proposing demand of duty on the basis of price charged by Voltas. The Assistant Collector ordered assessment according to value in terms of Section 4 and ordered that all pending assessments should be taken up (i.e. effective from 1-10-1975) for finalisation immediately. Stay of recovery of the differential duty amounting to Rs. 2,71,200.00 was granted by the Collector (Appeals) on 21-4-1980. By order dated 16-11-1981, the Appellate Collector allowed the appeal with consequential relief, holding that the basis of payment of duty is the price charged by the respondent and not the price charged by Voltas to its customers. In this background, the submission of the learned counsel that the review show cause notice results in levy of duty, is correct. In such cases, the time-limit for review as contained in the 3rd proviso to Section 36(2) is 6 months. This is the view taken by the Hon'ble Delhi High Court in the case of Associated Cement Companies Limited v. Union of India [1981 (8) ELT 421 (Del.)] and this Tribunal in the case of Collector of Central Excise v. RMDC Press (P) Limited, Bombay [1987 (29) ELT 957 (Bom.)]. We see no reason to depart from this view and we therefore hold that the show cause notice dated 3-9-1982 is hit by the bar of limitation.

4. The preliminary objection of the respondent is sustained. The notice is discharged and the appeal dismissed with consequential relief as per order-in-appeal of Collector (Appeals).