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Swarup Vegetable Products Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-29-1994

Reported in : (1995)(76)ELT194TriDel

Appellant : Swarup Vegetable Products

Respondent : C.C.E.

Judgement :

1. M/s. Swarup Vegetable Products Industries Limited are the manufacturers of the vegetable product falling under Tariff Item 13 of the Central Excise Tariff. While checking RT 12 returns for the months of April, 1981 to October, 1981 with the help of invoice it was found that M/s. Swarup Vegetable Products were charging Rs. 4 per tin distribution charges over and above the approved assessable value. It was of the view that it was therefore clear that this fact of charging of Rs. 4 per tin from their customer was not disclosed and was concealed by the party from Central Excise Department. No break up of the said distribution charges was mentioned in the invoice issued in this regard. Accordingly seven show cause notices covering the aforesaid periods of April, 1981 to October, 1981 were issued to the party requiring them to show cause as to why the Central Excise duty amounting to Rs. 33,947.65 short paid on this account should not be demanded from them under the provisions of Section 11A of the Central Excises and Salt Act, 1944. The show cause notice was duly answered. It was claimed that Rs. 4 charged by them as distribution charges, which are post-manufacturing expenses, they are to be excluded in determining the assessable value. It was

stated by them that charges claimed by them as post-manufacturing charges on equalised basis comprising loading charges of the goods in factory freight and unloading charges at a destination ensures in transaction and sale job expenses. It was admitted by them equalization of these expenses is done on the basis of the passed orders equal expenses incurred on the consignment cleared on earlier occasions. The Assistant Collector who adjudicated the proceedings negatived the contentions and based upon the break up of the distribution charges as furnished by the party was relied upon and correct amount of duty was determined by taking Rs. 4 as part of the assessable value, on account which the differential duty worked out as Rs. 35,543.00 against Rs. 33,947.65 covered by show cause notice and accordingly duty amount of Rs. 35,543.00 was confirmed by the Assistant Collector. The party has filed an appeal before the Collector (Appeals) who in turn confirmed the order of the Assistant Collector but restricted the amount of short levy to Rs. 33,947.65 for which the show cause notices were issued. Aggrieved by the said order both the assessee and the Department have come up before us by way these two appeals. The Department has also filed a Cross Objection (E/CO/114/83-A) in Appeal No. E/1221/83-Afiled by the party. The Order of Collector (Appeals) was challenged by the party on the issue with reference to inclusion of post-manufacturing expenses in the assessable value and against the charging of the duty amount, the Department has filed an appeal with reference to the same impugned order. Hence appeals and cross objection are clubbed together and are being disposed of by this common order.

2. Shri H.R Arora, learned Advocate for the appellants submitted that issue is with reference to the inclusion of post-manufacturing expenses. All the post-manufacturing expenses were admissible deductions at the relevant point of time in view of the prevailing case law on this issue and referred to the decision in the case of Hindustan Lever Ltd. v. Union of India and Ors. - [1980 (6) E.L.T. 643 (Bom.)] wherein it was held that the uniform delivery or distribution charges made from the wholesale buyer and separately shown in the invoice, are not to form part of the assessable value. He said that it was clearly held by the Tribunal in the case of Atma Steels .Pvt Ltd. - [1984 (17) E.L.T. 331] that Rules existing on the date of issue of show cause notice are applicable to the proceedings and this view was confirmed by the Supreme Court as reported in 1990 (48) E.L.T. A62 and

accordingly Department was neither justified in raising the demand nor invoking the larger period in the absence of suppression. In support of his contentions that post-manufacturing expenses are to be excluded, Agency Commission is an admissible deduction smoe it is nothing but a trade discount and expenses beyond the factory gate are excludible, he referred to the decisions in the case of East Anglia Plastics (India) Ltd. v. CCE, Calcutta - 1983 (12) E.L.T. 126, Matchwel Electricals (India) Ltd. - 1982 (10) E.L.T. 749 (G.O.I.) and A.P. Scooters Ltd. v.Collector of Central Excise, Hyderabad -1992 (57) E.L.T. (Tribunal), respectively. He also relied upon the decision in the case of Guljag Chemicals & Plastics Pvt. Ltd. v. Collector, of Central Excise, Jaipur 1993 (63) E.L.T. 710 (Tri.), wherein it was held that remuneration to clearing agents and forwarding agents are admissible deductions. He contended that apart from the merits of the case the demand was clearly barred by time since show cuse notice was issued beyond the period of six months. Larger period could not be invoked in the absence of suppression of facts nor mentioned as such in the show cause notice.

Price lists were duly approved by the Department and distribution expenses have been shown separately and hence it cannot be considered to be a suppression to invoke the larger period.

3. While countering the arguments Shri B.K. Singh, learned SDR submitted that issue on merits has been squarely covered by the decision of the Hon'ble Supreme Court in the case of Bombay Tyre International. The deductions as claimed by the party in the instant case does not fall under the purview of the deductions admissible in terms of aforesaid judgment and accordingly Rs. 4 per tin charged by the party over and above the approved price would form the part of the assessable value for the purpose of determining the assessable value under Section 4 of the Act. He said that it is not the change of law or Rule applicable on the date of issue of show cause notice as argued by the Counsel for the appellants, but in what manner and to what extent the expenditure is to be deducted with reference to Section 4 of the Act was considered by the Apex Court in determining the assessable value. Charging Rs. 4 per tin from the customers was not declared in the price list got approved by the Department but shown in the invoice and since there has been difference in between GP and invoice and

concealed the facts, it is a clear case of suppression as it was rightly observed by the Collector (Appeals). In support of the appeal E/2327/83-A filed by the Department, while reiterating the stand taken by the Department, he said that the Collector (Appeals) was not right in rejecting the demand to the extent mentioned in the show cause notice since short levy was worked out on the basis of figures furnished and accordingly it was confirmed by the Assistant Collector.

4. We have carefully considered the submissions made by both sides and perused the records. We find issue on merits has been squarely covered by the decision of the Supreme Court in the case of Bombay Tyre International as it was rightly pointed out by the Departmental Representative. The Hon'ble Supreme Court in its detailed judgment in the case of Bombay Tyre International have set at rest all the controversies and speculations having arisen on this account. It has been ordered that no deduction from the wholesale price value are deductible save and except in respect of (a) trade discount (b) excise duty, sales tax and other taxes if any payable in respect of excisable goods and (c) averaged freight.... Since charge of Rs. 4 per tin was arrived on the basis of averaging expenditure incurred on past orders /sales and as such these are not to be excluded from the value of goods not being the post-manufacturing expenses as it was rightly observed by the Collector (Appeals). On the issue of invoking larger period, we find that show cause notices were issued on 9-11-1981 for the period from April, 1981 to October, 1981. There was no allegation of suppression nor proviso to Section 11A was mentioned in the said show cause notices. Hence, Department was not justified in invoking the larger period. Accordingly demand if any beyond the period of six months was barred by time. Further we do not find any infirmity in the impugned order passed by the Collector in restricting the amount of short levy to Rs. 33,947.65 for which show cause notices were issued.

Accordingly appeals and Cross Objection are disposed of in the above terms.

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