

Collector of Central Excise Vs. Forest Inds. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-22-1995

Reported in : (1996)(83)ELT138TriDel

Appellant : Collector of Central Excise

Respondent : Forest Inds. Ltd.

Judgement :

1. This is an appeal against order dated 21-10-1983 passed by the Collector Central Excise (Appeals) Madras. Respondents are engaged in the manufacture of articles of wood falling under T.I. 68. During the relevant period they opted for assessment of their goods on invoice price under Notification No. 120/75-C.E., dated 30-4-1975. They were selling in the market firewood at Rs. 30/- per 100 Kg and saw dust at Rs. 3/- per bag. However, in terms of an agreement they were selling firewood and saw dust to their employees at Rs. 3/- per 100 Kg and at 0.25 per bag respectively. In respect of the sale to the employees the respondents were paying excise duty on the actual invoice price in terms of Notification No. 120/75. A show cause notice was issued to the respondent seeking to recover differential duty on the grounds that the reduced price at which firewood and saw dust was sold by the company to its employees could not be deemed as the correct assessable value of the goods. The Assistant Collector, Central Excise passed an order holding that the invoice price at which the goods were sold by the respondent to their employees was acceptable since there was no special relationship between the company and its employees. Against the order passed by

the Assistant Collector, the Department prefer an appeal before the Collector Central Excise (Appeals) who by the impugned order confirmed the finding of the Assistant Collector on the grounds that the respondents were entitled to the benefit of assessment on the basis of the invoice price in terms of Notification No. 120/75 in respect of goods sold to their employees as the connection between the company and their employees could not be deemed either as financial or commercial.

2. None appeared on behalf of the respondents who have requested that the matter may be disposed of on merits. On behalf of the Revenue, Shri A.K. Singhal, JDR submitted that the proviso IV to Notification No.120/75 stipulates that the invoice price should not be influenced by commercial, financial or other relationship, whether by contract or otherwise between manufacturer or any person associated in business with the manufacturer and the buyer or any person associated in business with the buyer other than the relationship created by sale of the goods. He contended that the price at which the goods were offered by the respondent to their employees having been influenced by their relationship was not acceptable as assessable value of the goods. He therefore pleaded that the impugned order may be set aside and the appeal allowed.

3. We have examined the records of the case. The only question which arises for consideration in this case is whether the specially reduced invoice price in respect of goods sold by the respondents to their employees-was acceptable as the assessable value of the goods in question under Notification No. 120/75-C.E., dated 30-4-1975. It is an admitted fact that the respondents who were engaged in the manufacture of various wood products were paying duty under the provisions of Notification 120/75 on the basis of the invoice price of Rs. 30/- per 100 Kg. in respect of firewood and Rs. 3/- per bag in respect of saw dust when sold to the buyers in the market. However, in terms of their agreement with their employees firewood and saw dust were sold to the employees at Rs. 3/- per 100 Kg and 0.25 per bag respectively. In this regard it is seen that in the case of Collector of Central Excise, Chandigarh v. Oswal Agro Mill Ltd. Ludhiana reported in 1985 (22) E.L.T. 159, the Tribunal has held that even though Notification No.120/75 is a statutory notification issued under Rule 8(1) of the Central Excise Rules, 1944 but the said

notification cannot go beyond the provisions of Section 4 which lays down the principles and guidelines for determination of assessable value of excisable goods and in determining the invoice price the same principles have to be followed. Since in terms of Section 4 of the Central Excises and Salt Act in respect of goods on which the duty of excise is chargeable with reference to value, such value, subject to other provisions of that section has to be determined on the basis of the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale. Since the sale of goods by the respondents to their employees in terms of an agreement would not constitute sale in the course of wholesale trade, such price evidently could not be deemed as the value as contemplated in Section 4 of the Central Excises & Salt Act and accordingly it could also not be accepted as the price for determination of the assessable value of the goods in question under Notification No. 120/75-C.E., dated 30-4-1975.

4. In view of the foregoing, we set aside the impugned order and allow the appeal filed by the Revenue.

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