

Collector of Central Excise Vs. Testles Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-30-1995

Reported in : (1996)(83)ELT157TriDel

Appellant : Collector of Central Excise

Respondent : Testles Ltd.

Judgement :

1. The Revenue being aggrieved with the Order-in-Appeal dated 17-4-1984 passed by the Collector of Central Excise (Appeals), Bombay had filed the present appeal, which was heard on 30-11-1995. The respondent - M/s. Testles Ltd., have requested for adjournment on the ground that their offices are lying closed and that the papers pertaining to the said appeal are not available. Shri P.K. Jain, Id. SDR is present for the appellant-Revenue.

2. The matter relates to the year 1981. On going through the matter on record, we felt that the matter could be disposed of on the basis of the facts already available and accordingly we rejected the prayer for adjournment by the respondent and asked the Id. SDR to proceed with the matter.

3. Shri P.K. Jain, Id. SDR stated that the matter relates to the inclusion of-profit of 5% in the declared cost of the raw material. The respondent were engaged in the manufacture of transmission lines towers on behalf of M/s. Gujarat Electricity Board (GEB). M/s. GEB were supplying raw materials to the respondent and had declared the value of such material. The respondent were paying excise duty on

the value arrived at after adding their conversion charges to the cost of the material supplied by GEB. The proceedings were drawn against them on the ground that the value of the raw materials declared did not include the margin of profit which was taken as 5% of the declared value. The Id. SDR submitted that as per provisions under law the value of the finished goods was determined under Section 4 of the Central Excises and Salt Act, 1944 and that the cost of the raw material had to be loaded by the margin of profit to arrive at the correct assessable value.

4. We have carefully considered the matter. The only point for consideration before us is whether the margin of profit which had been taken as 5% by the Revenue should be added to the declared cost of the raw materials in a case where raw material is supplied by the customer to the manufacturer and the manufacturer was charging their conversion charges.

5. On going through the material on record, we find that the value of the raw material as declared by the customer, M/s. GEB has not been assailed; only it has been stated that 5% as margin of profit should be added to this value. We do not consider that in a situation where the raw material is supplied by the customer, the margin of profit in the hands of the customer should be added to such a value. We are fortified in our view by the decision by the Hon'ble Supreme Court in the case of Ujagar Prints where the Hon'ble Supreme Court had held that where raw material is supplied by the customer, the assessable value has to be arrived at by adding the cost of the raw material + the job charges + the margin of profit of the manufacturer. When the raw material is supplied by the customer it is not a sale. He has given his raw material, which is used by the manufacturer for manufacturing finished goods. There is no allegation that the conversion charges collected by the respondent did not include their margin of profit.

6. Taking all the relevant considerations into account, we agree with the learned Collector of Central Excise (Appeals), Bombay, who had held that the demand pertaining to the amount for 5% notional profit is unsustainable. He has already held about the octroi charges that they are part and parcel of raw material value. Of course, we are not concerned with the issue of octroi charges in the

proceedings before us.

7. Accordingly the appeal filed by the Revenue is rejected and the Order-in-Appeal passed by the Collector of Central Excise (Appeals), Bombay is confirmed.

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