

C.C.E. Vs. Electronic Calculators and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-01-1995

Reported in : (1999)(114)ELT109TriDel

Appellant : C.C.E.

Respondent : Electronic Calculators and

Judgement :

1. This is an appeal filed by the Revenue being aggrieved with the Order-in-Appeal passed by Collector to Central Excise (Appeals), Madras.

2. The matter relates to the sale of electronic goods through a Sole Distributor. The Revenue has terms the Sole Distributor as a related person for the purpose of CESA, 1944. The matter was adjudicated by the Assistant Collector of Central Excise, Bangalore who ordered that the price at which the distributors M/s. Devidayal Electronics and Wires Ltd., Bangalore sold the goods which have been manufactured by the respondent M/s. Electronic Calculators and Computers Co., should be taken into account for Central Excise assessment purposes. On appeal, the Collector of Central Excise (Appeals), Madras set aside the order of the Asstt. Collector, Central Excise, Bangalore. He held that M/s.

Devidayal Electronics and Wires Ltd. who purchased the electronic desk type calculators from M/s. Electronic Calculators and Computers Co.

were not their related persons and accordingly the assessable value of these electronic calculators manufactured and cleared by M/s.

Electronic Calculator and Computer Co. will have to be determined with reference to the price at which these calculators were sold by them to M/s. Devidayal Electronics and Wires Ltd. 3. When the matter was called on 1-12-1995, Shri Vijay Singh, Id. SDR was present for the appellant-Revenue. No one was present for the respondent. A telegraphic intimation has been sent to the respondent on 13-11-1995. There is no request for adjournment. It is an old matter and show cause notice had been issued in September, 1983. On going through the material on record, prima facie we considered that the matter could be disposed of in the absence of the respondent.

Accordingly we asked Shri Vijay Singh, Id. SDR to proceed with the matter.

4. The Id. SDR referred to the facts in brief and submitted that the Asstt. Collector, Central Excise, Bangalore who had adjudicated the matter had dealt with the relationship between the respondent and their sole distributor at length and has referred to the decision in the case of Bombay Tyre International [1983 (14) E.L.T. 1896 (S.C.)] and 'related person' Under Section 4(4)(c). The order passed by the Id. Collector of Central Excise (Appeals) did not deal with the facts in the right perspective and in this connection he referred to the grounds of appeal by the Revenue.

5. We have carefully considered the matter. In the show cause notice dated 21-9-1983, there is no discussion as how and why M/s. Devidayal Electronics and Wires Ltd., Bangalore were the "related person" of M/s. Electronic Calculators and Computers Co. It has been mentioned therein that M/s. Devidayal had sold the goods for a value higher than the price approved by the department.

6. There is no mention of the difference in prices although the sale price of M/s. Devidayal which prices were inclusive of Excise duty had been mentioned. Under the provisions of Section 4(4)(c) for the purposes of Section 4, "related person" means a person who is so associated with the assessee that they have interest directly or indirectly in the business of each other and includes holding company, a

subsidiary company, a relative and a distributor of the assessee and any special distributor of such distributor. A reference to the distributor is in the inclusive part of the definition and the related person to attract the provisions of law had to be a person who is associated with the assessee that they have interest directly or indirectly in the business of each other. In these proceedings, nowhere it has been brought out that the distributor also had any interest in the business of the manufacturer. This aspect of the matter had come up for discussion in the Supreme Court decision in the case of Bombay Tyre International wherein the Hon'ble Supreme Court had held that only those distributors who are relative of the assessee will be covered by the above provisions of law. On this aspect also we find that the order passed by the Id. Collector of Central Excise (Appeals) does not suffer from any infirmity.

7. Taking all the relevant considerations into account, we find no infirmity in the impugned order and accordingly the appeal filed by the Revenue is rejected.

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