

Collr. of Central Excise Vs. Assam Timber Treating Works

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-14-1995

Reported in : (1996)(83)ELT443TriDel

Appellant : Collr. of Central Excise

Respondent : Assam Timber Treating Works

Judgement :

1. The respondent manufactured urea formaldehyde for captive consumption in the manufacture of plywood. Since the product was liable to duty the Assistant Collector arrived at its value in terms of Rule 6(b) of the Central Excise (Valuation) Rules. In calculating the cost of production as provided in this rule he added 10% as the normal profit that the assessee would earn on the sale of these goods. In appeal, the Collector (Appeals) reduced the profit to 5%. The department has come up in appeal against this order.

2. Rule 6(b)(ii) of the Valuation Rules provides that, if the value of the goods for captive consumption cannot be arrived at by applying Rule 6(b)(i) it shall be based on the cost of production or manufacture, "including profit if any, which the assessee would have normally earned on the sale of such goods." We have heard the Departmental Representative's argument that (Sic.) should be considered to be the normal profit margin that should be applicable. We however do not find anything particularly sacred about this 10%. It appears to have been adopted as a working rule, and not on any rationale commercial considerations. The judgment of the Punjab & Haryana High Court relied upon by Shri Jain in Food Specialities Ltd.

v. Appellate Collector of Central Excise & Customs -1988 (33) E.L.T. 331 did not in fact lay down that an addition of 10% was mandatory, it only confirmed the action of the authorities in adding this figure in the face of a refusal by the assessee to submit even rough figures. In fact this Tribunal has in Appollo Zipper Company Private Limited v. CCE - 1987 (29) E.L.T. 126 approved a figure of 7% as margin of profit.

3. There is no rationale given, either in the order of the Assistant Collector, or that of the Collector (Appeals) to justify the percentage determined by each of them. The Assistant Collector's statement that other manufacturers of the product earn 10-30% profit is not supported by any evidence. The reduction of this figure by Collector (Appeals) is also not seen to be based on any evidence. On being asked the advocate for the respondent stated that it would be possible to furnish to the department the profit, if any, that was actually being earned by manufacturers of this product on its sale. We therefore consider it proper that the assessable value should be fixed on the basis of actual profit that would have been earned by the assessee if it had sold the goods, based on profits that other sellers of this product had earned.

We therefore allow this appeal by remand.

4. The Collector (Appeals) shall determine afresh the actual margin of profit, based on the data that the respondent supplies and, if necessary his own enquiries and shall pass orders in accordance with law.

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