Collector of Central Excise Vs. Polychem Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-04-1996

Reported in : (1997)(91)ELT585Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Polychem Ltd.

Judgement :

1. This Appeal filed by the Department is against "the Order-in-Appeal No. GS/565-II/92, dated 25-8-1992 of the Collector of Central Excise (Appeals), Bombay setting aside the Order-in-Original No. V(B-13)(30) 8/91, dated 21-2-1992 holding that the price declared by the Respondents were approved by adding Rs. 2/- so far as polystyrene clear grade are concerned and adding Rs. 3/- in relation to the Polystyron colour grade. The Respondents filed price list No. 6/91 effective from 6-11-1991. The issue prices are according to the department, less than the price which could be worked out on the cost structure basis. Though the prices were declared at Rs. 35/- and Rs. 38/- respectively but according to the department the prices ought to have been Rs. 37/- and Rs. 40/- respectively per kg. The Respondents came forward with the plea that as the cost of the imported materials was cheaper, they have reduced the price accordingly to stand in the market. The explanation was not accepted and appropriate order was passed. In the appeal before the Collector (Appeals), he however, relying upon the decision of the Government of India in Forbes Campbel & Co. Ltd. reported in 1980 (6) E.L.T. 653, held that it was not necessary that the prices remain in conformity with

the cost structure and there was no evidence of there being any underhand dealing or other arrangement and therefore he set aside the order.

2. Arguing for the Revenue the ld. D.R. submits that working out the price on cost structure is an important factor and no party would without any cause agrees to sell the product at a price which is lower than the actual cost incurred. In his submission this is an artificial reduction for the purpose of evasion of duty and hence the order passed by the Collector (Appeals) requires to be reconsidered and set aside the order passed by the adjudicating authority and should be restored.

3. Arguing for the Respondents the ld. Counsel submits that there is no evidence of any flow back and artificial reduction in the price. The price structure is not sole criteria and here became the imported material was available at a cheaper rate, they were compelled to reduce the price. He refers to the decision of the Government of India v.Forbes Campbel & Co. Ltd. (supra) as also the Tribunal decision in the case of Guru Nanak Refrigeration Corporation v. C.C.E. -1996 (81) E.L.T. 290 (Tribunal). He further refers to the decision of the Tribunal in the case of Pepsi Foods Ltd. v. C.C.E. reported in 1996 (82) E.L.T. 33 (Tribunal). Referring to these decisions, he submits that the cost calculation should be resorted to only when no further evidence in relation to the price is available and that there can be no cause to [reject] the price even lesser than what can be arrived at, calculating on the basis of the cost structure.

4. Considering the submissions made by both sides, there is no evidence brought on record to show any flow back and except that the price declared is not in conformity with the price worked out by the department, no evidence is adduced to indicate why prices lower than the prices that can be arrived at according to the cost structure has worked out. The decisions referred to by the ld. Counsel clearly indicates that if the transactions between the buyer and seller are at arm's length and there is no flow back of money from the buyer to the assessee, even if the price declared is below the manufacturing cost, the same should not be rejected as incorrect. Here the relationship is not established and the transactions have to be held as between two independent parties at arm's length. Therefore all these

aspects considered by the ld. Commissioner (Appeals) appears to be in conformity with the law and hence there is no justifiable ground to interfere with the order passed by the authority. The same is confirmed and the appeal filed by the department is rejected.