
(2015) 11 SC CK 0014

In the Supreme Court Of India

Case No : Civil Appeal Nos. 288-289 of 2008 with C.A. Nos. 3586-3594 of 2007

Commissioner of C. Ex., Chennai

APPELLANT

Vs

Sai Mirra Innopharma Pvt. Ltd.

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Citation : (2015) 326 ELT 633

Hon'ble Judges : A.K. Sikri and C. Nagappan, JJ.

Bench : Division Bench

Advocate : S/Shri Arvind Datar, Senior Advocate, J. Shankar Raman, Mahesh Agarwal, Ms. Devika Mohan, Ankur Saigal and E.C. Agrawala, Advocates, for the Respondent; S/Shri K. Radhakrishnan, Senior Advocate, Ms. Nisha Bagchi, Ms. B. Sunita Rao, Ms. Pooja Sharma, Ritesh Kumar and B. Krishna Prasad, Advocates, for the Appellant

Final Decision : Disposed Of

Judgement

1. The appellant/Department had issued certain show cause notices to the assessee namely M/s. Sai Mirra Innopharma Pvt. Ltd. (SMIPL) alleging therein that the various Patent and Proprietary Medicines (P or P medicines) manufactured by it and supplied to Dr. Reddy Laboratories (DRL) were undervalued and, therefore, lesser excise duty was paid. It was alleged that the parties were related persons and because of these reasons the price which was agreed upon did not reflect true transaction as well. Notice was also issued to DRL proposing fine for the aforesaid arrangement made between the parties.

2. It is not necessary to state the facts in detail. Suffice it to mention that SMPIL and M/s. American Remedies Ltd. (ARL), M/s. Soft Caps Pvt. Ltd. (SCPL) were the companies run by the same group of persons. DRL has also been manufacturing same P or P medicines and in this manner ARL and DRL were competitors. Earlier these very goods were manufactured by DRL under its own brand name. DRL initially acquired more than 80% shareholding in ARL. The entire shareholding was acquired by DRL and in fact ARL got merged into DRL

under merger agreement which was sanctioned by the High Court of Andhra Pradesh. Insofar as the production unit of ARL, the DRL did not want to continue therewith and, therefore, plant, machinery etc. of ARL was sold by DRL to SM IPL. Thereafter, arrangement was entered into between SM IPL and DRL under which SM IPL agreed to manufacture the aforesaid medicines, albeit under the trade name/trade mark of DRL. In this manner, SM IPL undertook the job work on behalf of the DRL. These were the reasons for issuance of show cause notices in which it was inter alia alleged that the shares of ARL were purchased by DRL at a very high rates and in this manner huge consideration was given to the Directors along with their families who were also Directors in SM IPL. It was also alleged that non-compete fees was given as well to these Directors under an agreement in order to ensure that these persons did not manufacture any medicine and sell in their brand in the market. It was also alleged that the machinery of ARL which was sold by DRL to SM IPL was at lesser rate than the market rate and that too on soft terms inasmuch as the price thereof was to be paid in instalments spread over to one year. The allegations were confirmed in the Order-in-Original which was passed by the Commissioner which resulted in demanding differential duty as well as penalty and interest.

3. The Tribunal after re-examining the matter on the basis of evidence that was produced on record has negated all the aforesaid factors which were taken into account by the Commissioner and has arrived at detailed findings of fact stating that the respondent(s)/assessee(s) have been able to satisfactorily explain each and every allegation. The order of the Tribunal which runs into 108 pages has been gone into by us and we find that the Tribunal has arrived at the aforesaid findings by giving cogent reasons on the basis of evidence that was produced by the respondent(s)/assessee(s). We find that these are pure findings of fact arrived at by the Tribunal. In fact, in the appeal filed by the Department it is not even a ground that these findings are perverse.

4. We, thus, do not find any question of law that arises in these appeals and, therefore, these appeals stand dismissed.