

(2015) 04 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal Nos. 9571-9578 of 2003

Commissioner of Central Excise

APPELLANT

Vs

Baron International Ltd.

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Citation : (2015) 319 ELT 3

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : Nisha Bagchi, Shirin Khajuria, Sujeeta Srivastava, Pooja Sharma and B. Krishna Prasad, for the Appellant; V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, L. Charanaya, Aditya Bhattacharya, Hemant Bajaj, Ambarish Pandey, Anandh K. and Rajesh Kumar, Advocat

Final Decision : Allowed

Judgement

1. Respondent (BIL) is a distributor of AKAI products and purchased "AKAI" brand Colour TV Sets manufactured in India on job work basis from manufacturers including M/s. J.R. Electronics. (JRE). An investigation was carried out wherein it was claimed before the IO that there existed a provision for payment of 18% interest on all the loans and advances made to JRE by BIL. The investigating officer found that for the financial year 1994-95, the accrual of such interest had not been shown in the books of Respondent.

2. On the basis of these facts, 4 SCN's dated 12-6-97, 29-7-97, 31-7-97 and 8-10-97 were issued to the Respondents alleging that JRE was not an independent job unit but was a dummy of the Respondent created and nurtured with the single motive that cost of manufacture be reduced by bifurcation and the cost of sale promotion, advertisements, after sales services etc. were incurred by the Respondent company.

3. Adjudicating Authority vide its order in original dated 27-1-1999 held that the project report could not be called a device to reduce the burden of duty since at

the time when the project report was prepared by the Respondents, the CTV's attracted specific rate of duty. The price at which JRE sold goods were comparable to the prices charged by other manufacturers similarly placed for identical goods i.e. Uptron etc.

4. Ld. Authority confirmed the demand made in order dated 12-6-1997 and rejected the demand made in the remaining SCN's dated 29-7-97, 31-7-97 and 8-10-97. Ld. Authority ordered recovery of differential duty of Rs. 5,48,92,612/- after adjusting the duty already paid.

5. Aggrieved, the Appellant filed an appeal before the Tribunal. Respondent herein also filed a cross appeal. Tribunal vide its impugned final judgment and order dated 27-3-2003 dismissed the appeal of the Appellant allowed the appeal of the Respondent.

6. Ld. Tribunal held that the project report submitted by the Respondent was of no importance since at the said time the rate of duty was specific. The tribunal rejected the contention that the certificate given by Chartered Accountants regarding the payment of interest of JRE was cover-up operation and concluded that JRE had accepted loans which were returned with interest to the manufacturer and hence the services of the Respondent No. 2 were adequately compensated. Thus, relationship between the BIL and JRE was on principal to principal basis and the value charges by the job workers reprinted the assessable value.

7. It is apparent from the reading of the show cause notices that main reason for taking action against the Respondent Assessee was that JRE was dummy of BIL. However, after going through the order of the Commissioner as well as the Tribunal, we find that this plea of the Appellant has not been accepted as proved. After detailed analysis of the material produced, the aforesaid two authorities have concluded that JRE was an independent establishment. Moreover, another relevant aspect, which is material for our purposes, is that it has been found that the relationship between the BIL and JRE was on principal to principal basis. In fact, the goods were supplied by the JRE to BIL at the same rates at which within the other companies, namely, Uptron and Dixon Utilities were supplying. Therefore, no benefit was even secured by the BIL on the basis of the alleged relationship. On this aspect the case is squarely covered in favour of the Respondent by the judgment of this very Bench in the case of Commissioner of Central Excise, Hyderabad v. Detergents India Ltd. and Anr. in C.A. Nos. 9049-9051 of 2003 decided on 8-4-2015 [2015 (318) E.L.T. 552 (S.C.)]. As a result, we find no merit in the present appeals. These are accordingly dismissed.