
(2015) 10 SC CK 0090

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5996-5998 of 2007

Commissioner of Central Excise

APPELLANT

Vs

Hindustan National Glass Industries Ltd.

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Central Excise Rules, 1944 — Rule 173C, 173F

Central Excise Rules, 1975 — Rule 7

Central Excises and Salt Act, 1944 — Section 14A, 4

Citation : (2015) 326 ELT 17 : (2016) 53 GST 30

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Yashank Adhyaru, Sr. Advocate, Nisha Bagchi, A.K. Srivastava and B. Krishna Prasad, Advocates, for the Appellant; Arshad Hidayatullah, Senior Advocate, Aarohi Bhalla and Sujata Kurdukar, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. The Respondent No. 1/assessee is having two manufacturing units. Unit I in Pimpri, Pune is engaged in the manufacture of imprinted glass bottles for distribution soft drinks. Unit II in Chinchwad, Pune is engaged in printing the logos of different soft drink manufactures. It is not in dispute that while clearing these bottles, the Assessee was paying excise duty on the assessable value determined on the basis of the cost of production and profit of the un-printed glass bottles Under Rule 6(b)(ii) of the Valuation Rules. The Assessee received orders of printed bottles from the soft drink manufacturers and adopted a "Spilt Billing System". In the said system, Unit I was generating the bill for un-printed bottles to the soft drink manufacturers and physically transferring the unprinted bottles to Unit II. Unit II was raising bill for labour charges for printing. While doing so, it was not paying any excise duty on the ground that printing does not amount to manufacture. The said system resulted in increase in the gross price charged by the Assessee from its customers over a period of time but the increase was reflected by way of increased labour charges by Unit II. The

assessable value adopted by the Unit I for paying duty continued to be the same and as a result, Unit I was showing heavy loss whereas Unit II was showing heavy profits. The Appellant/Department's case is that the spilt billing system adopted by the Assessee in such a way that the value of unprinted bottles was reduced artificially although, there was no sale of goods from Unit I to Unit II. There was lot of difference between the sale price of unprinted bottles and sale price of printed bottles even after taking into consideration the excise duty paid by the Unit I. Thus, in view of the above, it appeared that the Unit I had contravened the provisions of Section 4 of the Central Excise Act, 1944 read with Rule 173C and Rule 173F of the Central Excise Rule, 1944 as it has undervalued its clearance of unprinted soft drink bottles. Therefore, a show cause notice dated 26-6-1998 was issued by the Commissioner demanding Rs. 2,14,30,340/- alleged to be short paid duty during the period from January, 1995 to October, 1997 on the basis of evidence collected during the cost audit conducted in respect of the Assessee in terms of the provisions of Section 14A of the Central Excise Act and investigation of the assessable value of the goods in terms of Rule 7 of the Central Excise Rules, 1975. The said show cause notice was confirmed by the Assessing Officer vide its Order-in-Original dated 10-12-1998. The Assessing Officer held that the methods adopted by the Assessee in determining the assessable value of the product have not been found to be above board. There is no sale of goods involved between Unit I and Unit II because both the units are of the same company. Therefore, a sale method to arrive at the assessable value is to work backward from the sale price of the bottles to independent buyers by the Assessee. The transactions between the Assessee and its independent clients are at arm's length and there would be no manipulation in the price. So the Investigation Officer had worked backward from the sale price of the bottles of the Unit II. From the sale price of Unit II, it has subtracted the cost of printing of bottles to arrive at the actual assessable value of the imprinted bottles.

2. Aggrieved by the aforesaid order, Assessee filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"). The Tribunal vide its final order dated 13-4-2007 allowed the appeal of the Assessee and remitted the case back to the adjudicating authority with the following terms and conditions:

"(a) No demand relating to the period prior to 15-1-1997 shall arise.

(b) For the period from 15-1-1997 the value shall be determined on cost construction basis and for the said purpose reliance can be placed on the cost audit report already conducted by the department after providing a copy of the same to the Appellant, if not already given.

(c) For the period from 15-1-1997 the nature of suppression, misstatement, if any, in relation to their price list dated 10-12-1996 can be looked into afresh and appropriate penal action can be considered.

(d) The Appellant is free to adduce any evidence which they would like to rely upon before the Commissioner and entitled to raised all issues before him.

(e) The Commissioner shall give reasonable opportunity of hearing before final order is passed."

3. Since the matter is back to the Commissioner for fresh consideration, it may not be necessary to interfere with the order of the Tribunal insofar as it directs remand of the matter. However, the grievance of the Department in the present appeal is as it is argued by Mr. Yashank Adhyaru, learned senior counsel for the Appellant/Department that the Tribunal has restricted the period in which the issue is to be decided from January, 1997 to October, 1997 whereas the show cause notice covers the period from January, 1995 to October, 1997. His submission was that the finding of the Tribunal that period from January, 1995 to October, 1997 should not be considered is based on wrong premises. In this behalf, it is pointed out that in para 8 of the impugned order, the Tribunal has supported the aforesaid plea with the reason that period from January, 1997 to October, 1997 was a period during which price list was filed on 10-12-1996 by the Assessee. He submits that it is factually incorrect because of the reason that the aforesaid price list referred to by the Tribunal pertains to Rishikesh Unit and not to Pune Unit. He further argues that in the instant case, the Department had invoked the larger period of limitation on the ground of suppression and misstatement on the part of the Assessee. He, thus, submits that the Commissioner should be allowed to consider the issue covering the entire period from January, 1995 to October, 1997.

4. On going through the record, we find that there is substance in the aforesaid submission of Mr. Adhyaru as the price list to which reference is made related to Rishikesh Unit and not to Pune Unit. Therefore, we modify the order of the Tribunal with clarification that the period would be the entire period that was the subject matter of show cause notice, i.e., from January, 1995 to October, 1997. At the same time, we also clarify that it would be open to the Assessee to argue before the Commissioner that it was not permissible for the Department to invoke the larger period of limitation as there was no suppression or misstatement on the part of the Assessee. If such a plea is raised, it would be for the Commissioner to take the view thereon with reference to the record and decide the same in accordance with law. The appeals stand disposed of in the aforesaid terms.