

(2015) 09 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No. 3969 of 2006 with C.A. No. 5194 of 2010.

Commissioner of Central Excise, Bangalore - Appellant @HASH Campco

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 324 ELT 27 : (2016) 13 SCC 708

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

Bench : Division Bench

Advocate : S/Shri Yashank Adhyaru, Senior Advocate, Avtar Singh Chauhan, Arijit Prasad, Ms. Shefali Sethi and B. Krishna Prasad, Advocates, for the Appellant; S/Shri Ravinder Narain, Ajay Aggarwal, Ms. Mallika Joshi, Ms. Ruchika and Rajan Narain, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. The assessee-respondent, viz., M/s. Campco had been doing the job work on behalf of M/s. Nestle India Limited and was manufacturing chocolates exclusively for M/s. Nestle India Limited (hereinafter referred to as M/s. Nestle).
2. In addition, it was manufacturing the said chocolates for themselves as well, which were independently marketed. The dispute arose in respect of the price that was charged from M/s. Nestle by the assessee. The appellant-Revenue found that M/s. Nestle had advanced a sum of Rs. 4.5 crores to the assessee and as per the Revenue, that had influenced the price which was being charged. Thereby, the respondent was not charging the normal market price from M/s. Nestle for supply of those chocolates.
3. It resulted in issuance of Show Cause Notice dated 13-3-1995 followed by another Show Cause Notice dated 29-3-1995 covering different periods. The respondent was asked to show cause why differential duty as mentioned in the Show Cause Notice be not demanded from the assessee.
4. The assessee gave its reply submitting that the aforesaid advance of Rs. 4.5 crores was given by M/s. Nestle to the assessee for the purchase of machinery and it was only a lone transaction independent of the trading relationship

between the parties and had not impacted the price which was normal price charged from M/s. Nestle. The Commissioner accepted the aforesaid contention and after going through the records found that there was no mutuality of interest between the parties and the price at which the goods were sold by the assessee to M/s. Nestle would be the value at which the excise duty was payable. This order has been upheld by the Customs, Excise and Service Tax Appellate Tribunal as well.

5. Following findings in this behalf have been recorded by the Tribunal :-

"We also take the issue on merits and find that the Commissioner's reasoning to drop the show cause notice is correct in law. M/s. Nestle India Ltd. was supplying the raw material. They had given loan for purchase of machinery but it had not influenced the pricing and the assessable value of the goods manufactured by the assessee as an independent job worker. The value of the job worker alone is required to be adopted in terms of the Apex Court judgment rendered in the case of M/s. Pawan Biscuits Ltd. (cited supra) which has followed the earlier judgment of the Apex Court rendered in the case of M/s. Ujagar Prints (cited supra). There is no flow back of funds and the assessee herein does not have interest in M/s. Nestle India Ltd.'s profits. There is no mutuality of interest and the relationship was on principal-to-principal basis. The view of this settled position of law, dropping of proceedings by the Commissioner in both these orders is correct, legal and proper. There is no merit in these appeals and the same are rejected."

6. These are pure findings of facts after analysing the documents on record and does not call for any interference. There is also a finding recorded by the authorities below that the assessee was the real manufacturer and not M/s. Nestle.

7. The civil appeal is accordingly, dismissed.

Civil Appeal No. 5194 of 2010

8. The civil appeal is dismissed in terms of the aforesaid orders passed in Civil Appeal No. 3969 of 2006.