(2015) 11 SC CK 0009

In the Supreme Court Of India

Case No : Civil Appeal No. 543 of 2008

Commissioner of Central Excise, Raigad APPELLANT

Vs

Dujodwala Products Ltd. RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Citation : (2015) 326 ELT 233

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

Bench : Division Bench

Advocate : S/Shri Yashank Adhyaru, Senior Advocate, Ms. Arunima Dwivedi, Ms. Sunita Rani Singh, Ritesh Kumar and B. Krishna Prasad, Advocates, for the Appellant; S/Shri S.K. Bagaria, Senior Advocate, Sandeep Narain and M.H. Patel, Advocates, M/s. S. Narain and Co, for the Respondent

Final Decision : Allowed

Judgement

1. The nature of order which we propose to pass does not call for recording the factual matrix in detail. Suffice it to state that four show cause notices covering period from February, 2004 to May, 2005 were issued to the respondent/ assessee herein on the ground that the assessee had contravened the provisions of Section 4 of the Central Excise Act read with Rule 4 & 5 of the Central Excise Rules inasmuch as it failed to declare the correct price of its manufactured goods and also contravened Rule 6 of the Central Excise (Determination of price of Excisable Goods) Rules, 2000 as it had failed to correctly assess/determine the central excise duty payable on the goods manufactured and cleared by it.

2. The aforesaid allegations were made in the show cause notices on the premise that the goods were also supplied to certain persons who were ''related persons'' and the valuation of those goods was much higher. It may further be mentioned that though the respondent/assessee is manufacturing various kinds of goods, show cause notices were confined to one product only viz. ''Camphor''. The assessee denied that such persons were related persons. The contention of the assessee was not accepted and the demand made in the show cause notices was

confirmed by the Commissioner vide his Order-in-Original dated 30-3-2006. Among others, one M/s. Royal Chemicals which had sold the goods to its customers was treated as the related person. For the purpose of valuation, the Commissioner took into consideration the price of Rs. 118.56 per kg. Order of the Commissioner was challenged by the assessee on various grounds by filing appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The CESTAT has allowed the appeal vide impugned judgment dated 28-3-2007 [2007 (213) E.L.T. 346 (Tri.-Mum.)]. It is how the Revenue is in appeal before us.

3. At the time of arguments Mr. S.K. Bagaria, learned senior counsel appearing for the assessee stated that the CESTAT had not only rejected the case of the Revenue predicated on M/s. Royal Chemicals being related person but also pointed out that it held that the price of Rs. 118.56 per kg. could not be adopted to constitute the excisable value of the goods sold by the assessee inasmuch as that was the price at which M/s. Royal Chemicals sold the goods for the period 2001-2002 which was much prior to the period in dispute. It was also pointed out that though the show cause notices pertain only to the product ''Camphor'' while making the calculation in the Order-in-Original, the Commissioner included various other products as well, while computing the demand. He further submits that in the aforesaid circumstances, the assessee has no objection if the price at which the goods were sold by the alleged related persons is made the basis of arriving at the valuation for each month separately, which is covered by the show cause notices. He further submits that it should relate only to ''Camphor''. There cannot be any dispute on the aforesaid two aspects. Accordingly, we set aside the impugned order passed by the CESTAT and remit the case back to the Commissioner with the following directions :

(1) The Commissioner shall proceed on the basis that the parties named in the show cause notices are ''related persons''.

(2) However, the price which is to be taken into consideration for the purpose of arriving at transaction value shall be the price at which the goods were sold by such parties in the months in question to which show cause notices pertain to.

(3) Further the computation shall confine only to the product ''Camphor''.

4. We may also record the submission of Mr. Bagaria that while arriving at transaction value, the benefit of deduction on the ground of excise duty, sale tax, freight and transit insurance should be given. Since these deductions are permissible under the provisions of the Act it hardly requires to mention that the Commissioner shall allow the same once satisfactory proof of incurring these expenses is furnished by the assessee. The assessee shall be permitted to file the required computation as well as documents in support its case.

5. The appeal is, accordingly, allowed.