(2015) 05 SC CK 0125

In the Supreme Court Of India

Case No : Civil Appeal No. 7853 of 2004

Crompton Greaves Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Central Excise (Valuation) Rules, 1975 — Rule 6
Central Excises and Salt Act, 1944 — Section 4(1)

Citation : (2015) 320 ELT 690

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

Bench : Division Bench

Advocate : S.N. Jha, Senior Advocate, Braj Kishore Mishra, Aparna Jha, Siddhartha Arya and Abhishek Yadav, for the Appellant; K. Radhakrishnan, Sr. Adv., Rupesh Kumar, Rashmi Malhotra and B. Krishna Prasad, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The Appellant herein manufactures Vacuum Interrupter Tube (VIT) which is used in the production of Vacuum Circuit Breakers. The VITs are manufactured by the Appellant at its Aurangabad unit. These are sold to the third parties in the open market and also cleared by the Appellant as well for its own unit at Nasik for captive consumption. The Appellant has been paying Central Excise duty for the goods cleared for its Nasik unit. The Revenue/Department found that the price shown for various models of VET cleared for captive consumption of the Appellant''s own unit at Nasik is much lesser than the price at which the Appellant had been selling such products to the other parties. This resulted in issuance of the show cause notice dated 25-5-2001 for the period 1996-2000. A differential duty of Rs. 94,48,210/- was proposed to be demanded therein. The Respondent replied to this show cause notice in which the prime contention raised was that even if Nasik unit was its own unit and it would be treated as related party, the prices at which the goods were cleared, for Nasik unit was negotiated price and at arms length. On that basis it was pleaded that the price

declared for clearance of such goods for Nasik unit should be accepted.

2. The Assessing Officer rejected the aforesaid plea of the Appellant and confirmed the demand raised in the show cause notice. The rejection was on the ground that Nasik unit was to be treated as "related party", such price as declared cannot be taken into consideration in view of the provision of Section 4(1)(a) of the Central Excise Act, 1944. For the purpose of valuation the adjudicating authority resorted to the Valuation Rules. He took into consideration the instance of those models of VIT which were identical in nature and supplied to third party and the highest comparable price i.e. the highest price at which the goods were sold to the third party. In respect of those goods which were not identical, he looked into those models where the goods were comparable and took such a price into consideration. For remaining goods method for determining the value as laid down under Rule 6(b)(ii) of the Central Excise Valuation Rules, was adopted.

3. The order of the adjudicating authority was challenged by the Appellant by filing appeal before the Tribunal. Here also the main contention of the Appellant was that the goods which were cleared by the Aurangabad unit for its Nasik unit were at negotiated price and that a price should have been taken into consideration even if the goods were to the related parties. We find that this aspect has been dealt with in detail by the Tribunal and it has given valid reason in the impugned order while rejecting the contention of the Appellant. Therefore, on this ground the order of the Tribunal does not call for any interference.

4. Another contention raised before us is that it would not be open to the Assessing Officer to take into consideration only the highest of comparable price. More so, when the sale to a particular party which shows the highest price was one off sale of a singular unit. To demonstrate this, the Appellant has produced the chart at page 44 of the paper book which pertains to four models of VIT. After going through this chart we find some substance in the submission of the Appellant in respect of supply of one model only. In this chart the quantity which was cleared by the Appellant for its Nasik unit for the year 1997 is shown in tabulated form in respect of second and fourth model. Insofar as VIT model WL-34599 C-I is concerned, we find that the goods which were cleared by the Appellant for its Nasik unit show the value between Rs. 10,700/- to Rs. 13,000/- at different periods. However, the Assessing Authority has fixed the value at Rs. 22,650/- only on the ground that one party, viz., M/s. Ovac Switchgear this very product was supplied at that rate. We find that it was only one unit which was supplied to the said period. In comparison there are sales made to another party, viz., Beicco Lawrie and the price charged from the said party is Rs. 12,500/- during 1997-1998, 1998-1999, 1999-2000 and Rs. 11,400/- for the year 2000-2001. This is almost comparable price at which the goods were cleared for its Nasik unit. Therefore, in respect of this model the goods which were cleared by the Appellant for its Nasik unit should have been accepted and the price could not have been fixed at Rs. 22,650/-. Subject to the modification aforesaid

remaining part of the order of the adjudicating authority as confirmed by the Tribunal is maintained and the appeal is partly allowed to the aforesaid extent.