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2023 SCeJ 0077

SUPREME COURT OF INDIA

JUSTICE S. Ravindra Bhat , JUSTICE Dipankar Datta

COMMISSIONER OF CENTRAL EXCISE, ALLAHABAD v. M/S J.R. ORGANICS LTD.

CIVIL APPEAL NO. 8502 OF 2009

1st March 2023

Sea Customs Act, 1878, S.30 - Central Excise Rule, 1994, R.6(p)(i), R.6(p)(ii) - The most conservative price is to be taken into account while determining the value of goods, CESTAT approach and conclusions, in the opinion of this Court cannot be faulted.

Petitioner Counsel: MUKESH KUMAR MARORIA, Respondent Counsel: CHARANYA LAKSHMIKUMARAN

Cases referred to:

Paras 5, 7, 8: A.K. Roy Vs. Voltas Limited, 1973 (3) SCC 503

Paras 7, 8: Vacuum Oil Company Vs. Secretary of State for India, AIR 1932 PC 168

Para 8: Union of India Vs. Delhi Cloth and General Mills, 1963 Suppl. (1) SCC 586

JUDGEMENT

S. RAVINDRA BHAT, J. - (01.03.2023) - The revenue has filed this appeal, aggrieved by the order of Customs Excise & Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi dated 27.07.2009. CESTAT had rendered its Order dated 12.11.2007 upon a remand order by this Court in CA No. 4975/2002.

2. The respondent-assessee manufactures organic chemicals for the purposes of which it sources Specially Denatured Spirits (hereinafter 'SDS') produced, inter alia, from its unit at Kaptanganj, Uttar Pradesh. To manufacture SDS one of the essential raw materials required is molasses. The assessee was issued three show cause notices covering the following period :-

S.No . Show Cause Notice No. Dt. Period Different Duty 1 C.No. VI(MP) Demand(12) ADJ-116/98/3149 DT. 26.3.99-SCN No. 12/Commar.-AUD- 99/26.3.99 April 94 to Feb.,99 Rs. 14,5949,158.65 2 C.No. 20 CE/Somaiya/SBZ/99 550 dt. 31.8.99 March, 99 to July, 99 Rs.

25,12,528/- 3 C.No. 20- CE/Somaiya/SBZ/61 dt. 18.1.2000 August, 99 to Dec, 99 Rs. 4,99,417/-

3. The respondent-assessee, contended that upon a proper valuation in terms of Rule 6(p)(ii) of the Central Excise Rule, 1994, the value of SDS was determinable on the basis of its in-house production at Kaptanganj. The order in original, however, held otherwise, confirming the demand made in the show cause notices. Since the first show cause notice covered an extended period, penalty too was imposed. Aggrieved, the assessee approached CESTAT which, by its order dated 20.02.2002 allowed the appeal holding that the method adopted by the Commissioner was incorrect. The Commissioner had for the purposes of determining the value of SDS, determined the highest rate of the product of SDS prevalent in another unit at Sarai District, Gorakhpur, on a specific date.

4. The revenue's appeal was allowed by this Court which remanded the matter for fresh consideration, inter alia, observing that the mere rejection of the highest rate was insufficient and the Court had to decide on the basis of judicial discretion of the assessing officer, whether there was any rationale in the fixation done and what was the appropriate method of valuation.

5. CESTAT in the second round, after remand held, inter alia, as follows after considering the evidence on the record :

"The normal price of the goods is the price at which the goods are 'ordinarily' sold in the course of wholesale trade, it is a sort of representative price of the course of wholesale trade. It is a sort of representative price of the goods during a particular period. Hon'ble Supreme Court in the case of A.K. Roy ad another vs. Voltas Limited (supra), in para '19' the judgment has observed the while determining the price which is to represent the real value of the goods to be taxed, the price must be conservative in every respect. Therefore, while determining the price of the goods being cleared for captive consumption by invoking Rule 6(b) (i), on the basis of the price of comparable goods of the same assessee or other assesses, the most conservative price must be adopted, not the highest of the prices as it will loose the character of the normal price."

6. Learned counsel for the revenue submitted that CESTAT fell into error in not accepting the Commissioner's determination that the value of the goods were properly determined under Rule 6(b)(i). He submitted that given the various ingredient mentioned in that provision, the revenue was under an obligation to decide the value based upon factors such as material characteristics and the nearest ascertainable value of the goods. Given these circumstances, the discretion exercised by the Commissioner in basing himself upon the value of the goods on a particular day (when it was in its highest price) in the Sarai Distillery at Gorakhpur was valid and legal one.

7. Having considered the records and the submissions of the parties, this Court is of the opinion that the impugned order cannot be faulted. This Court in its judgment reported as 'A.K. Roy Vs. Voltas Limited, 1973 (3) SCC 503' held as follows :-

"21. The next question is : what exactly is the meaning of the term the 'wholesale cash

price'? In *Vacuum Oil Company v. Secretary of State for India in Council*, it was held that the term means the price paid by retail traders on wholesale purchase. The essence of the idea is that the purchase must be a wholesale purchase and not a retail one. In other words, the sale must be wholesale and not a retail one in order that the price realised may be termed the 'wholesale cash price'. In that case the appellants before the Privy Council imported at Bombay, very large quantities of lubricating oil of a particular manufacture and mark. They sold it direct to numerous customers, never to dealers. The price they charged was the same whether a large or small quantity was bought, except that if a consumer contracted to buy from them all his requirements for a year, he was entitled to a discount from 2-1/2 to 15 per cent according to the quantity bought in the year. No other lubricating oil of a like kind and quality was sold in Bombay. On the question whether the appellant was bound to pay customs duty on the basis of clause (a) or clause (b) of Section 30 of the Sea Customs Act, 1878, the Privy Council held that since the sales were to customers direct, the real value of the goods cannot be ascertained under clause (a) of Section 30 and that clause (b) of Section 30 was applicable. Their Lordships said that in determining the price which is to represent the real value of the goods to be 'taxed, "the price must be conservative in every respect and free in particular from any loading for any post-importation charges incurred in relation to the goods". "The price is to be a price for goods, as they are both at the 'time' and 'place' of importation. It is to be a 'cash price', that is to say a price free from any augmentation for credit or other advantage allowed to a buyer; it is to be a net price, that is to say it is a price 'less trade discount' ". Their Lordships, therefore, held that the words the 'wholesale price' were used in the section in contradistinction to a 'retail price', and that not only on the ground that such is a well recognised meaning of the words but because their association with the words 'trade discount' indicates that sales to the trade are those in contemplation, and also because only by attaching that meaning to the word is the 'wholesale price' relieved of the loading representing post- importation expenses which, as a matter of business, must always be charged to the consumer, and which are eliminated."

8. As is evident in *Voltas Ltd. (supra)* had cited previous authorities such as '*Vacuum Oil Company Vs. Secretary of State for India*, AIR 1932 PC 168' and '*Union of India vs. Delhi Cloth and General Mills*, 1963 Suppl. (1) SCC 586'.

9. In view of the clear principle enunciated by this Court which is that the most conservative price is to be taken into account while determining the value of goods, CESTAT approach and conclusions, in the opinion of this Court cannot be faulted. The impugned order of the CESTAT is accordingly affirmed.

10. The appeal is, therefore, dismissed. There shall be No order as to costs. Pending application(s), if any, shall stand disposed of.