Case Title

"Hatsun Food Company, Shri R.G. ... vs Commissioner Of Central Excise on 3 September, 2004"

Source

"Customs, Excise and Gold Tribunal - Tamil Nadu"

Indiankanoon ID

211998

Case Proceedings

"ORDER\n\n \n\n P.G. Chacko, Member (J)\n \n\n1. These appeals are against an order of the Commissioner of Central Excise confirming a demand of duty of over Rs. 1.8 crores against M/s. Hatsun Food Company (HFC, in short), imposing on them penalties under Section 11AC of the Central Excise Act and Rule 173 Q of the Central Excise Rules, 1944 and also imposing penalties on Shri R.C. Chandramogan (Managing Partner of the above firm) and Shri Raja K.S.P. Ganesan (Partner of the above firm) under Rule 209 A of the said Rules. The demand of duty is on excisable goods cleared by M/s. HFC to M/s. Hatsum Agro Products Ltd. (HAPL, in short) during the period 1995-96 to 98-99. It is on a value addition made by the department on the basis of the price at which M/s. HAPL sold the goods to their customers, which, in turn, is based on a finding that HFC and HAPL are 'related persons' under Section 4(4) (c) of the Central Excise Act. It appears from the records that a major part of the production in HFC's factory was sold to HAPL and the remaining part sold at factory gate to other independent buyers. The value addition proposed by the department in the relevant show-cause was opposed by HFC, who took the view that, where factory gate sales to independent buyers were available, it was the price for such sales that would constitute 'normal price' for the purpose of assessment of the goods to duty of excise and that the price at which the major buyer, whether related or not, sold that goods to the ultimate customers was irrelevant. The show-cause notice, incidentally, also proposed penalties on HFC and its partners. This proposal was also resisted. In adjudication of the dispute, the Commissioner passed the impugned order, the operative part of which has already been outlined.\n2. Ld. Chartered Accountant submits that the valuation issue arising in Appeal No. E/307/2004 is similar to the issue which had arisen before this Bench in the case of Hatsun Milk Food Ltd. and Ors. (Appeal Nos. E/1845 to 1849/99/MAS) which was decided as per Final Order No. 1303-1307/2000 dated 16.8.2000 in favour of the assessee. Ld. C.A. submits that the conclusion arrived at in the said order is squarely applicable to the instant case. It is also pointed out that the said Final Order was not challenged by the Revenue and has become final and binding on them. The demand of duty requires to be set aside, following the decision of this Bench in the case of Hatsun Milk Food Ltd. (supra). Consequently, the penalties also require to be vacated.\n3. Ld. SDR has endeavoured defend the order of the Commissioner by harping on the aspect of 'lifting the corporate veil\". She has spoken of 'unity of interest' between HFC and HAPL. She considers that HFC is the manufacturing unit and HAPL is their marketing limb. This way, she seeks to establish 'mutuality of interest' between them and, thereby, \"relationship\" between them in terms of Section 4(4) (c) ibid. Ld. SDR, therefore, submits that the valuation of the goods cleared by HFC to HAPL during the material period should be based on the price at which the latter sold the goods to their customers. In his rejoinder, Ld. C.A. submits that any relationship between HFC and HAPL is irrelevant inasmuch as factory gate sale price charged to independent buyers is readily available. His reliance, in this connection, is on the Supreme Court's judgment in the case of Union of India v. Kantilal Chunilal and Ors., 1987 (1) ECC 1 (SC) : 1986 (26) ELT 289 (SC).\n4. We have considered the submissions and the cited case law. We find that there is a clear parallel between this case and the case of Hatsun Milk Food. M/s Hatsun Milk Food Ltd. had sold their major production to a party who was considered by the department as \"related\" to the assessee, and the remaining goods were sold to buyers who were admittedly unrelated. In that case, it was also an admitted fact that the prices at which sales had been effected to the so-called related person were at levels higher than those charged to unrelated buyers during the relevant period. This Bench, by following the ruling of the Apex Court judgment in Kantilal Chunilal (supra), held that the goods sold by M/s Hatsun Milk Food Ltd. to the so-called 'related' buyer were liable to be assessed on the basis of the price at which the former sold identical goods at factory gate to other independent buyers. It was held that the relationship, if any, was irrelevant to such a valuation. We find that the factual matrix of the instant case is, essentially, the same as that of Hatsun Milk Food. The decision in the said case has become final and binding for want of challenge by Revenue and hence the same has to be followed in the instant case. Accordingly, we hold that the clearances effected by HFC to HAPL during the period of dispute are liable to be assessed

to duty on the basis of the price at which the former were selling identical goods during the same period at factory gate to other independent buyers, however small the proportion of such sales may be. The assessee, in this case, valued their goods only on this basis and paid duty accordingly. They are not liable to pay any more on those clearances. The demand of duty is, therefore, set aside. Once the demand of duty is set aside, penalties should follow suit and we vacate the same. The impugned order is set aside and the appeals stand allowed.\n"