

Customs, Excise and Gold Tribunal - Tamil Nadu

Carponics Pvt. Ltd. vs Commissioner Of Central Excise on 27 August, 1998

Equivalent citations: 1999 (107) ELT 135 Tri Chennai

ORDER S.L. Peeran, Member (J)

1. This is an appeal filed by the appellants against the Order-in-Original No. 48/88, dated 24-6-1988 passed by the Collector of Central Excise, Bangalore, confirming the duty demand of Rs. 2,20,241.34 under proviso to Section 11A of the Central Excise & Salt Act besides imposing penalty of Rs. 25,000/-.

2. The appellants are the manufacturers of T.V. sets falling under tariff Item 33A of Central Excise Tariff. The appellants have filed classification and price lists from time to time and the same has been approved and they have cleared the goods on the basis of declared goods and in terms of price lists filed by the appellants. The appellants had been issued with questionnaire by the Inspector of Central Excise. In terms of the said questionnaire, they had given details about the pattern of sales. They had also declared about the distributor M/s. Amar Traders and they did not have any sale agreement. A statement was also recorded by the Inspector, Chamarajpet Range, Bangalore on 23-8-1982 from the Managing Director of the appellants. In this statement, he has given the details of manufacturing of TV sets from December, 1981 and the number of sets so manufactured as 135 sets. They have manufactured only two models i.e. one is ordinary model and the other is deluxe model. He had also stated that their products are sold directly to the wholesale dealers in Karnataka and Tamil Nadu. They have filed their price lists in Part-I showing the prices charged to their customers and their products are delivered at the factory gate. He had also stated that 75% of the products are sold to Amar Traders and the rest to their customers directly and the price charged is same to the wholesale dealers and to direct customers. A number of questions were put to him including the sales to M/s. Amar Traders. He categorically stated that Amar Traders are their wholesale dealers like any other wholesale dealers and there was no agreement for the simple reason that they are wholesale dealers. He had explained as to why they were filing declaration as distributors, when they had no agreement, by saying it is a purely a technical error crept in while answering the questionnaire. It may be seen from the answers already recorded that they have declared as 'not having agreement with Amar Traders, Bangalore and explained that it is purely a confusion in answering the questionnaire. They presented invoices raised to Amar Traders and others and asked the Inspector to varify the records and they presented all the records for the purpose of verification and for clarification. The appellants had also submitted a certificate of Chartered Accountant in August, 1982 and had stated that the value declared as Rs. 1600/- for plain variety and Rs. 1795/- for delux variety has clearly certified by a Chartered Accountant of M/s. Boal & Rajan, Bangalore. The appellants categorically submitted that the sales made to consumers were on credit basis cum retail price. He had explained the retail price cannot form a part of assessable value and a detailed explanation was given by the appellants. However, after a lapse of time, a show cause notice, dated 3-9-1984 was issued by the Superintendent (Technical) of Central Excise. In the said show cause notice the demands were raised on the ground that they had under-valued the said T.V. sets and they had not correctly filed the classification as well as price lists with an intention to evade the duty. It was also alleged in the show cause notice that the premises of the appellants and premises of the M/s. Amar Traders were housed in the same building, which was owned by the

father of the Managing Director. It was also alleged that the sale price of deluxe and plain variety of T.V. sets were Rs. 2980/- and Rs. 2650/- respectively to the BEL Welfare Association and Others (which is inclusive of all taxes and accessories), whereas to the Central Excise Department they had given the price as Rs. 1,795/- (Rs. 2452.57 including of all taxes and accessories) and Rs. 1600/- (Rs. 2225.24 inclusive of all taxes and accessories). It was alleged that they have sold their T.V. sets at different prices to different customers, which were definitely much higher prices than the declared prices. It was alleged that as per Section 4(a)(i) there cannot be two prices for the same commodity during the normal trade in wholesale market. Therefore, it is alleged that higher price at which the goods have been sold were taken as assessable value and since they have wilfully misdeclared the value and thus suppressed the correct assessable value, the demands were raised under proviso to Section 11A of the Act. The appellants have filed a detailed reply vide letter, dated 27-2-1985 meeting all the grounds and stating that there was no difference in price and they have not received any commercial extra advantage from M/s. Amar Traders and M/s. Arati Enterprises and they have submitted that there was no financial flow back. The appellants have also submitted that the sales were made to the dealers only at the arms length from principal to principal basis. The learned Counsel relied on the judgment of Supreme Court in the case of Bombay Tyres International Ltd. as reported in 1983 E.L.T. 1896. They have also raised the ground of time barred and state that the transactions and the price declared should be accepted and there was nothing which calls for taking a different view in the matter. The appellants were heard on 28-1-1988 and the matter was closed for orders. However, the Commissioner after hearing the matter, immediately issued an addendum show cause notice dated 6-5-1988 alleging suppression and invoking proviso to Section 11A of the Act. It was also alleged that the wholesale dealers M/s. Amar Traders and M/s. Arati Enterprises were related persons and hence the transactions were not at arms length. The appellants resisted the addendum show cause notice and pointed out that in terms of this addendum show cause notice, which has been issued after a lapse of period, it is totally barred by time and the allegations of suppression under proviso to Section 11A cannot be introduced in the addendum show cause notice. However, all their pleas were rejected and the demands were confirmed including imposing of personal penalty.

3. We have heard both sides. The learned advocate filed a detailed written submissions on each aspect of the matter including the contention that the suppression and other allegations were invoked after hearing and such addendum show cause notice invoking the larger period is unsustainable and that by itself clearly discloses that the demands are barred by time. The department had not produced any evidence to show that the sales made to M/s. Amar Traders and M/s. Arathi Enterprises were not on principal to principal basis and there was financial flow back. He contends that the sales for wholesale dealers and sales to the consumers were same including the price to M/s. Amar Traders and M/s. Arathi Enterprises. Various other arguments were raised by the learned counsel in this matter including non-determination of price in terms of Rule 6 in case of the retail sales.

4. The learned D.R. reiterated the departmental contention and supported the learned Commissioner's order.

5. On a careful consideration of the submissions, we notice that the demands are barred by time for the reason that in this particular case the statement had been recorded in the year 1982 with respect to the detailed questionnaire and the appellants had produced all the records including invoices and price lists. They have also produced a certificate from the Chartered Accountant clarifying the point that sale prices were uniform and that there was no flow back in the matter. The correctness of the value was also certified by the Chartered Accountant. The matter was not investigated and no further enquiries were done except issue of show cause notice, dated 3-9-1984 by the Superintendent of Central Excise. The reply was given on 27-2-1985 and the matter was considered by the Commissioner, who took up the matter for consideration, later the Commissioner amended the show cause notice by invoking proviso to Section 11 A, invoking the larger period by alleging suppression that too after closing the issue for orders. The addendum show cause notice, dated 6-5-1988 alleges suppression of facts and also raises new grounds that two wholesale dealers namely M/s. Amar Trader and M/s. Arathi Enterprises are related persons and on these grounds the Commissioner has proceeded to confirm the demand. The department was fully aware of the facts and the marketing pattern, as disclosed by the appellants by invoices, price lists, statements, questionnaire and other details given by them as far back as on 23-8-1982. Therefore, the issue of addendum show cause notice alleging new facts after a lapse of period is time barred. Even, the show cause notice, dated 3-9-1984 is also barred by time, as the department was fully aware of all the facts, which had been elicited by enquiries. The classification list had been approved from time to time. Besides, we notice that the Commissioner had initiated fresh proceedings by issuing addendum show cause notice, dated 6-5-1988 alleging new grounds and making out a new case. By issuing an addendum show cause notice, a new case cannot be made out within the ambit of proviso to Section 11A in respect of pending proceedings. Therefore, on this ground alone, the appellant is entitled to succeed. We notice that the appellants have also raised certain grounds on merits of the matter, which prima facie has got force. However, we have noticed that the demands are barred by time in this matter.

6. We, therefore, set aside the impugned order and the appeal is allowed with consequential relief, if any.