

2012 (2) ECS (92)(Tri-Mum)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST REGIONAL BENCH AT MUMBAI

M/s Sandvik Asia Pvt. Ltd.
Versus
Commissioner of Central Excise, Pune – I

Application No. E/S/1315/12
Appeal No. E/883/12

Arising out of: Order-in-Appeal No. P-I/RKS/38/2012 dated 15.3.2012

Passed by: The Commissioner of Central Excise & Customs (Appeals), Pune-I

Date of hearing: 20.09.2012

Date of Decision:20.09.2012

M/s Sandvik Asia Pvt. Ltd.

Appellant – Represented by
Ms Purnima L, Advocate

Versus

Commissioner of Central Excise,
Pune – I

Respondent – Represented by
Shri V.K. Agarwal, Addl. Commr.
(AR)

CORAM:

Shri S.S. Kang, Vice-President

Shri P.R. Chandrasekharan, Member (Technical)

ORDER NO. S/1526/12/EB/C-II

“The Revenue submitted that M/s Sandvik AB, Sweden is holding company of the applicant firm and M/s Sandvik AB, Sweden and the appellants are having more than 50% of the shares in M/s Walter AG Germany, which in turn holds 99.9% of shares of M/s WTIPL, the customer of the applicant. The contention is that as M/s WTIPL is trading in the same goods on higher price, therefore, the demand is rightly made.” [Para 5]

“We have gone through the adjudication order and we find that the goods cleared by the applicants were further sold by M/s WTIPL at the higher price. In view of the share holding as mentioned in para 5, prima facie the dealing is not at arm’s length.” [Para 6]

1. Heard both sides.
2. Applicant filed this application for wavier of pre-deposit of duty of Rs.18,38,795/-, interest and penalty.

3. The applicants are engaged in the manufacture of Specific Drilling Tools and clearing the goods to M/s Walter Tools India Pvt. Ltd. (WTIPL) on payment of duty. During the period October, 2005 to March, 2006, the applicants cleared the goods to M/s WTIPL on payment of duty on total value of Rs.4,55,67,110/-. The same goods were subsequently sold by M/s WTIPL to their various customers on the value of Rs.6,75,69,435/-. The Revenue is demanding duty of Rs.18,38,795/- at the sale price of the goods by M/s WTIPL on the ground that applicants and M/s WTIPL are related person.
4. The contention of the applicant is that M/s WTIPL is not related to the applicants and dealing is at the arm's length. Hence, the demand is not sustainable. Applicant also submitted that the demand is time barred as the Audit Party has raised the issue in 2006 and the show-cause notice has been issued on 20.9.2010.
5. The Revenue submitted that M/s Sandvik AB, Sweden is holding company of the applicant firm and M/s Sandvik AB, Sweden and the appellants are having more than 50% of the shares in M/s Walter AG Germany, which in turn holds 99.9% of shares of M/s WTIPL, the customer of the applicant. The contention is that as M/s WTIPL is trading in the same goods on higher price, therefore, the demand is rightly made.
6. We have gone through the adjudication order and we find that the goods cleared by the applicants were further sold by M/s WTIPL at the higher price. In view of the share holding as mentioned in para 5, prima facie the dealing is not at arm's length. On the issue of limitation, we find that the issue of limitation is question of law and facts and the same shall be taken at the time of final hearing.
7. Keeping in view the facts and circumstances of the case, we find that applicant has not made out a prima facie case for complete waiver of pre-deposit. Accordingly, the applicant is directed to deposit Rs. 4.5 lakhs within a period of eight weeks. On deposit of the above mentioned amount, the pre-deposit of the balance amount of duty and penalty shall stand waived and recovery thereof stayed during pendency of the appeal.
8. Compliance is to be reported on 5.12.2012.

(Dictated and pronounced in open Court)