Tax Hotline

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FIRST BLOOD ON TRANSFER-PRICING CASE IN INDIA

Income-tax (**I-T**) authorities in Mumbai, India in their first-ever transfer-pricing-related case, have initiated penalty proceedings against Roussel India, on charges of allegedly overinvoicing the intermediates it had imported from a related company in France. Roussel's control over the Indian Company is through its 100 per cent subsidiary Roussel Laboratories, in the UK, which has a 33.33 per cent stake in Roussel India.

There are common directors in Roussel Uclaf, Roussel Laboratories UK and Roussel India, so as to be governed by the related party transaction norms. Before the introduction of the transfer pricing regulations in India, which was done in the Budget for the year 2001, the provisions of Section 92 of the Indian Income-Tax Act, 1961, dealt with transactions entered between residents and non-residents, for making additions in its assessment.

Interestingly, the Revenue department in this case did the transfer-pricing assessment much before the government enacted the new transfer-pricing laws.

The department has contended that the over-invoicing was done for the purpose of recording a loss and, thereby, evading taxes in India. The transactions relate to assessment years 1996-97 and 1997-98.
Roussel India had merged with pharmaceutical major Hoechst Marion Roussel in 1998. The transactions in this case were the import of cefotaxim sodium and roxithromycin, materials used for making Claforan and Rulide - both antibiotics, from Roussel Uclaf, France. According to the I-T authorities, the pricing strategy adopted by Roussel Uclaf and Roussel India was intended to project revenues, which were less than the actuals.

I-T authorities contended that Uclaf overinvoiced exports to India to such an extent that Indian operation to manufacture Claforan appeared to be running in a loss. Roussel Uclaf and Roussel India are related companies and, hence, Roussel Uclaf controlled the transaction.

The alleged overinvoicing of cefotaxim compared to other importer manufacturers were 88 per cent and 164 per cent for 1996-97 and 1997-98, respectively, according to the estimation of I-T authorities. Similarly, in percentile terms, import of roxithromycin was overinvoiced 109 per cent and 103 per cent respectively, for assessment years 1996-97 and 1997-98.

The case is now pending before the Commissioner (Appeal), Income Tax, which is the first Appellate Level for litigation before the revenue authorities.

Source: The Economic times June 12, 2001

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