

Sofesule Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-12-1997

Reported in : (1998)(75)LC870Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Sofesule Pvt. Ltd.

Respondent : Cce

Judgement :

1. This appeal is directed against the order-in-original dated 20.12.1989 passed by the Additional Collector of Central Excise, Bombay-II confirming demand of Rs. 64,256.29 P. and imposing penalty of Rs. 5,000/- on the appellant.

2. The demand has arisen in connection two price lists dated 20.8.1981 and 4.5.1984. These price lists are signed by the appellant as well as the representative of M/s. Makin Pharmaceuticals for whom the appellant was manufacturing Ergocin Capsules on loan and licence basis. The first price list referred to small packing of 20s with assessable value of Rs. 7 and bulk of packing with assessable value of Rs. 232 arrived at by multiplying 7 x 20 and arriving at 2/3 of the same. In the second price list, the appellant declared the price only of bulk clearances (loose) as Rs. 91.79 based on cost data certified by Chartered Accountant. The remarks column of the price list stated that the appellant will manufacture and clear the capsules in bulk under Rule 56A and M/s Makin Pharmaceuticals will pack in saleable packs for clearing the duty. The price lists

having been duly approved, the appellant was paying appropriate duty during the period from January 1982 to September 1984.

3. Show cause notice dated 8.8.1992 was issued stating that duty was being paid either on value computed as 2/3rd of maximum retail price with an undertaking that differential duty would be paid at the time of final clearance. The notice further alleged that appellant suppressed that M/s Makin Pharmaceuticals was not holding any excise licence during the period for manufacture of P & P medicines and had no permission to receive goods under Rule 56A or avail proforma credit and was not paying differential duty at the time of final clearance of goods received under Rule 56A and the appellant abetted M/s. Makin Pharmaceuticals in evading Central Excise duty to the extent indicated.

Notice proposed demand of duty and imposition of penalty on the appellant. No notice appears to have been issued to M/s. Makin Pharmaceuticals. Though the appellant raised various contentions, the Additional Collector overruled the same, confirmed the demand and imposed penalty of Rs. 5,000/- 4. After hearing both the sides for a considerable time, we must confess that the facts are not very clear. This is mainly because of lack of particulars in the show cause notice. The basis of the notice is that appellant and M/s. Makin Pharmaceuticals were availing benefit of notification No. 305 of 1977. According to the appellant, throughout the period in question, the appellant was receiving the main raw materials from M/s. Makin Pharmaceuticals, purchasing other raw materials necessary, manufacturing capsules, returning the capsules to M/s. Makin Pharmaceuticals in bulk packing on lease licence basis. The learned Counsel for the appellant is not certain whether during the period covered by the first price list, M/s. Makin Pharmaceuticals were repacking the capsules in smaller packs of 20s and selling the same only to retailers. However, he stated that this was being done during the period covered by the second price list. He also stated that the prices declared in the first price list were the prices being charged by MS/. Makin Pharmaceuticals to their customers and not the appellant's prices to M/s. Makin Pharmaceuticals. He points out that appellant would not have priced the goods to M/s. Makin Pharmaceuticals for the simple reason that the latter were supplying two main raw materials free of cost. The show cause notice alleges that the appellant was paying duty on 2/3rd of

MRP or at the cost prices. We take it that payment of duty on 2/3rd MRP shows the first price list and that payment of duty on cost price relates to the second price list.

5. No doubt, the first price list refers to the retail price as well as bulk price but the bulk price has been arrived at by deducting 1/3rd from the price at the retail price. If that be so, the Addl.

Collector should have applied the wholesale price charged by M/s. Makin Pharmaceuticals to their wholesalers or should have proceeded on the basis of notification Nos. 162/66 and 255/83 which provide some relief to manufacturers of P & P medicines by choosing to pay duty on discounted MRP price. Since the Adjudicating authority choose neither of these methods, the order in so far as the first price list is bad.

The matter requires further consideration after obtaining information from M/s. Makin Pharmaceuticals. Taking into consideration the fact that the benefit of Notification No. 305/77 was availed would necessarily mean that the appellant had undertaken to pay duty otherwise payable by M/s. Makin Pharmaceuticals during the relevant period, provided M/s. Makin Pharmaceuticals was selling the goods without doing any further manufacturing process such as retail packing.

If during the relevant period, they were converting the bulk packing into retail packing, they would also be regarded as manufacturers and their liability to pay higher duty on higher assessable value arrived at as a result of repacking process, cannot be shifted to the appellant under the terms of Notification 305/77.

6. So far as the second price list is concerned, far from the appellant giving any undertaking to pay duty on behalf of M/s. Makin Pharmaceuticals, the price list signed by both the concerned parties clearly indicated that the final duty on the repacked goods will be paid by M/s. Makin Pharmaceuticals thereby clearly indicating that the benefit of Notification 305/77 was not being invoked. There was no dispute that Ujagar Prints clarifying would not apply in regard to the period governed by the second price list since M/s. Makin Pharmaceuticals was converting the bulk packing into retail packing. It was therefore, necessary for the

Addl. Collector to apply his mind and arrive at the correct assessable value on which appellant was liable to paying duty during the period covered by the second price list.

7. So far as the aspect of limitation is concerned, it is contended by the appellants that there was full disclosure of facts in the price lists and therefore, the appellant cannot be held guilty of suppression of material facts with intent to evade duty. In so far as the second price list is concerned, since the activity of M/s. Makin Pharmaceuticals was explained, it was clearly stated that in so far as the retail packing was concerned, they would be paying duty. But that cannot be said of the first price list. Therefore, this aspect also requires more careful consideration.

8. In view of what we have indicated above, we are not in a position to finally dispose of the appeal and consider it necessary to remand the case to the appropriate authority for fresh decision.

9. For the reasons indicated, we set aside the impugned order and remand the case to the jurisdictional Adjudicating authority for decision afresh in accordance with law and after giving the appellant an opportunity of hearing.

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