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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Jun-12-1998

**Reported in :** (1998)LC595Tri(Delhi)

**Appellant :** Smithkline Beechem Consumer

**Respondent :** Collr. of C. Ex.

**Judgement :**

1. This is an appeal against the order in appeal dated 29-11-1991 passed by the Collector of Central Excise (Appeals), Chandigarh rejecting the appeal filed before her by the appellant against the Order-in-Original of the Assistant Collector of Central Excise, Patiala. The Assistant Collector by his said order disallowed deductions claimed by them in their price lists under the head "distribution charges and sales tax". On both these points the Collector (Appeals) upheld the findings of the Assistant Collector and rejected the appeal leading to the present appeal.

2. Appellant has sent a letter in reply to the hearing notice that the matter may be decided on merits in the light of several judgments covering the issues involved. Such issues have been indicated as - (1) Disallowance of distribution expenses as non-admissible abatement in arriving at the assessable value of the products.

(2) Allowability of sales tax borne by the company as an admissible abatement in arriving at the assessable value of the products. We have accordingly heard Shri M. Ali, JDR.3. It is submitted by Shri Ali that the distribution expenses, the deduction of which is claimed from the price for arriving at the assessable value,

are actually depot expenses. Such expenses do not qualify for deduction as held by the Supreme Court in the MRF judgment [1995 {77} E.L.T. 433 (S.C.)]. As regards the other deduction claimed by them, Shri Ali states that while the Sales Tax paid by the assessee would be eligible for deduction from the sale price for arriving at the assessable value, the case of the department here is that the appellant had not actually paid the Sales Tax amount in question since what was paid was actually received back by them. This would mean that the Sales Tax amount claimed for deduction was not actually borne by them and accordingly the same would not be eligible for deduction.

4. We have considered the submissions made by Shri Ali. We have perused the record. The deduction claimed on account of distribution expenses which are expenses incurred by the appellant at the depot where sales are effected would not qualify for deduction. This is the ratio of the decision in the MRF case referred to by Shri Ali. As regards the claim for deduction of Sales Tax, we find that the Assistant Collector had observed in his order that the sales tax amount in question had been paid on the finished goods at the time of removal but were subsequently received back for reprocessing. He has proceeded to state that the element of Sales Tax which appellant had claimed for deduction was not to be passed on to the Sales Tax Department and as such no deduction on this account appeared to be admissible. There is no evidence that the Sales Tax paid on the finished goods at the time of removal was received back by the appellant when the goods were returned for reprocessing. Appellant has also not been questioned about their getting refund of the said Sales Tax amount on the ground that such goods on which Sales Tax had been paid were received back for reprocessing. Since Sales Tax paid by the manufacturer would be eligible for deduction in arriving at the assessable value from the price, we consider it expedient to remand the matter to the Assistant Commissioner to decide the matter de novo when it will be open to the appellant to file evidence as to whether they had actually incurred the said amount in question and had not received back the said amount of Sales Tax from the State Government concerned when the goods themselves were returned for reprocessing. If the appellant is able to produce evidence about their having incurred the Sales Tax liability and also not got refund of the same they would be eligible for the benefit claimed. Conversely if the department establishes that

appellant had not borne the Sales Tax burden the deduction thereof may be disallowed.

The impugned order is set aside and the matter is remanded to the Assistant Commissioner for de novo decision in the light of the observations made above.

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