

Smithkline Beecham Consumer Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-22-1998

Reported in : (1999)(81)LC273Tri(Delhi)

Judge : G B Deva, N T C.N.B.

Appellant : Smithkline Beecham Consumer

Respondent : Cce

Judgement :

1. These are two appeals filed by the assessee involving common issues and therefore, they are clubbed together and are being disposed of by this common order.

2. Shri G. Shiv Dass, learned advocate submitted that appeal No.E/715/94-A is the main appeal involving the dispute with reference to the deductions and second appeal E/2679/94-A relates to consequential demand with reference to the first appeal.

3. He submitted that the appellants are engaged in the manufacture of malted food like 'Horlicks' etc. They claimed abatement on account of freight and insurance, taxes like sales tax, turnover tax, discount and distribution expenses. He said that he had no quarrel with the deduction of taxes like sales tax, turnover tax etc. since the same was already considered by the authorities below. Similarly, he is not pressing the issue with reference to the distribution charges since that issue has

already been covered by the decision of Supreme Court in the recalled MKF case. Hence, he confined to the freight and insurance and trade discount. As regards the freight charges, he submitted that deduction is allowable in respect of freight charges from the depot to the dealer's premises. The Assistant Collector has disallowed the deduction on the ground that the point of delivery is depot. He submitted that the goods were originally transported from factory to depot and ultimately the goods were delivered at the customer's premises from the depot. Referring to Section 4(2) of the Central Excises and Salt Act, 1944, he submitted that with reference to the freight for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such prices. On an appeal filed by the assessee, the Collector (Appeals) was also of the view that the goods were sold at depot and place of delivery cannot be taken as the premises of the customers. Shri G. Shiv Dass submitted that sufficient evidence is placed on record accompanied by an affidavit to show that it was the practice of the appellant's company to deliver the goods at the destination of the customers. He submitted that Collector (Appeals) of Hyderabad with reference to the appellant's other unit has considered these points holding that freight from the point of clearance i.e. factory to the depot and from depot to the point of delivery of the purchaser in wholesale trade is permissible.

4. Shri K. Srivastava, learned DR referring to the findings given by the authorities below submitted that nothing is on record to show that the goods were delivered at the premises of the customers. The Collector (Appeals) has analysed this position and held that depots are sale points and accordingly, freight charges incurred by the party from depot to the destination of the customers is not permissible.

5. As regards the discount, Shri G. Shiv Dass submitted that there was no allegation in the show cause notice that it was not passed on to the customers nor was known to them at the time of removal but, the show cause notice simply alleges that by selling the goods through depot, there is only transfer of goods and no change in the title of the goods is effected. The Assistant Collector held that even if the discount claimed by the party is the discount allowed by its depots to the customers then again, this discount cannot be deducted to arrive at the assessable value as this discount is not the one given outright at the time of

removal of goods but something that is allowed post clearance.

Shri G. Shiv Dass submitted that Collector (Appeals) has gone beyond the show cause notice and findings given by the Assistant Collector while deciding the issue with reference to the discount and observed that since the appellants have claimed that quantity sold to depots being a bulk buyer is in a position to get bulk discount in view of the bulk purchases, the appellants should have filed the price list in Part II rather than claiming as they are doing wrongly, the Part I prices for others on the basis of such contracted sale price with the bulk buyer namely, Canteen Stores Department.

6. Shri K. Srivastava, learned DR emphasising the observations made by Collector (Appeals) submitted that the appellants have claimed the discount with reference to other customers based upon the discount with reference to Canteen Stores Department and same is not permissible. He also submitted that show cause notice, order-in-original and order-in-appeal dealt with the claim of the party with reference to Canteen Stores Department but not other buyers. Shri G. Shiv Dass submitted that discount was claimed by the appellants in the price list and is applicable to all the customers including the Canteen Stores Department.

7. We have carefully considered the submissions made by both the sides.

There is sufficient force in the arguments advanced on behalf of the appellants on the issue of abatement of freight charges. Nothing is on record to substantiate that the goods were delivered at depot. The party has substantiated that the goods were delivered at premises of the customers. This position was not rebutted by the department while denying the claim of the assessee. Further, the order passed by the Collector (Appeals) in respect of appellants' other unit also supports the practice of the assessee that the goods are delivered at the destination of the customers. In view of the factual position and in view of the wordings of Section 4(2) of the Central Excises & Salt Act, the freight charges incurred by the appellants upto the place of delivery is permissible. Accordingly, appellants succeed on this issue.

8. As regards the second issue, it is a settled position now that the discount should be passed on to the customers and same was known to the customers before the removal of the goods. This important position has not been looked into by the authorities below while examining the issue with reference to discount. Discount cannot be dis-allowed on the ground that this was claimed from the sale from depots. In the instant case, it is clear that no sale has taken place from the factory and the goods were originally transferred from the factory to the depot and actual sale has taken place from depot only. We make it clear that it cannot be disallowed on the ground that they have claimed the discount in respect of depot sales but, the point to be examined in this case is whether discount was passed on to the customers and same was known to them before removal of the goods. This position may be looked into afresh by the jurisdictional Assistant Collector and to pass order accordingly after providing an opportunity to the appellants. Thus, these two appeals are disposed of in the above terms.

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