WIn Medicare Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-08-1999

Reported in : (1999)(113)ELT323TriDel

Appellant : WIn Medicare Ltd.

Respondent : Collector of Central Excise

Judgement :
1. In this appeal filed by M/s. Win Medicare Ltd., Modipuram, Meerut, the matter relates to the determination of assessable value of the medicines manufactured by the appellant. With regard to various components of the price, the appellants had filed price lists which had been provisionally approved. The Asstt. Collector of Central Excise, Meerut has passed a speaking appealable order in which he allowed some of the deductions claimed and disallowed some of the elements of assessable value claimed by the assessee for deduction. On appeal, the Collector of Central Excise (Appeals), Ghaziabad passed the following order: (i) Cash discount of 1.5% being paid to all buyers who paid for the goods indented by them at the time of placing the order itself is admissible, (ii) Quantity discount on the basis of the amount actually allowed and reflected in the invoices would be admissible.

(iii) Selling and Distribution expenses comprised of commission and service charges paid to Clearing and Forwarding Agents and interest on inventories and interest on receivables are not abateable from the assessable value, (iv) Cost of packing is not abateable from the Assessable Value.

2. Shri M.J. Villappally, Sr. Advocate appearing for the appellants submitted that after the Supreme Court decision in the case of Govt. of India v. MRF Ltd. 1995 (77) E.L.T. 433 (S.C.) the matter has been finally settled with regard to the interest on inventories and the interest on receivables. While with regard to the interest on inventories according to the MRF judgment, the assessee was not eligible for deduction, as regards the interest on receivables the deduction was allowable.

3. As regards the commission to the C&F Agents, the matter has early been decided by the Supreme Court in the case of Coromandal Ltd. v.U.O.I. as reported in 1984 (17) E.L.T. 607 (S.C.) and according to that decision the Commission paid to the selling agent was not deductable from the assessable value.

4. The assessee had also claimed deduction of the service charges to the C&F Agents. Both the adjudicating authority and the appellate authority has not clearly discussed the nature of such service charges.

Ld. Sr. Advocate submitted that if it related to the loading and unloading charges then the assessee was clearly eligible for the benefit. He however, fairly agreed that as the exact nature of the service charges was not forthcoming from the record, the matter could be remanded to the jurisdictional Asstt. Commissioner of Central Excise for considering the matter after giving an opportunity to the assessee to present their case.

5. As regards the secondary packing he submitted that with regard to the similar dispute, the matter had been remanded by the Tribunal into the assessee's own case, Win Medicare Ltd. v. C.C.E. reported in 1998 (78) ECR 637 (Tribunal). He submitted that on similar grounds, the issue relating to secondary packing could be re-examined by the jurisdictional Asstt. Commissioner of Central Excise.

6. In reply Shri K. Shiv Kumar, ld. JDR broadly agreed with the submissions made by ld. Sr. Advocate and had no objection for remand of the matter with regard to service charges to the C&F Agents and secondary packing.

7. We have carefully considered the matter. We find that with regard to interest on inventories, the matter has already been decided against the assessee by the

Supreme Court in the case of Govt. of India v. MRF Ltd. reported in 1995 (77) E.L.T. 432 (S.C.). Similarly the issue relating to interest on receivables had also been decided in favour of the assessee by the same decision. As regards the commission to the C&F Agents, the matter stands settled by the Supreme Court decision in the case of Coromandal Fertilizers Ltd. v. U.O.I. reported in 1984 (17) E.L.T. 607 (S.C.).

8. We therefore, hold that the interest on inventories were not permissible deductions while the interest on receivables were eligible for deduction. We also hold that the commission paid to C&F Agents was not allowed to be deducted from the assessable value.

9. As regards the service charges to the C&F Agents, ld. Sr. Advocate had submitted that the nature of the service charges was not very clear from the orders passed by the lower authorities. We find that the Supreme Court in MRF case had also dealt with the various permissible deductions and we consider that this matter could be remanded to the jurisdictional Asstt. Commissioner of Central Excise who should decide the matter afresh after giving an opportunity to the appellants to present their case.

10. As regards the secondary packing the issue had come up earlier before the Tribunal in the assessee's own case reported in 1998 (78) ECR 637 (Tribunal). The Tribunal observed that the deduction of the cost of corrugated boxes packing depended on the quality and nature of the packing and the returnable nature of the packing depends on the agreement between the parties or on account of trade practice. The Tribunal had observed that these aspects had not been considered in a proper manner. The Tribunal had remanded the matter to the jurisdictional Asstt. Commissioner for passing a fresh order in accordance with law and the observations made in that order and after giving appellants an opportunity of hearing. With regard to the present controversy also, with the similar observations we remand the matter to the jurisdictional Asstt. Commissioner of Central Excise.