

Modi Xerox Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-2000

Reported in : (2000)(69)ECC688

Judge : S T G.R., a Unni

Appellant : Modi Xerox Ltd.

Respondent : C.C.E.

Judgement :

1. In the instant case, the Appeal has arisen because of rejection of refund claim on account of unjust enrichment. The refund claim arose because the appellants reduced the price of Photo Copier and filed the revised price list (reducing the price). The price was reduced by the appellant. Pending approval of the price list, appellant was paying duty under protest at the quantum as was applicable to the higher price before reduction. When the price list was finally approved, the appellants filed a refund claim for the period from the date of filing the price list to the date of approval. The authorities below have held that sanction of this refund claim shall amount to unjust enrichment and therefore rejected the refund claim.

2. Arguing for the applicant, Shri A.R. Madhav Rao, Ld. Counsel submits that similar cases in the past have been referred back to the concerned authorities, as the issue can be examined only in the light of documents available with the assessee which need detailed examination.

He submits that the Tribunal on similar lines is requested to remand the case for examination by the authorities below.

3. Shri T.A. Arunachalam, Ld. JDR submits that in case an assessee reduces the price but collects duty on the same amount as collected at higher price, he only loses a part of his profit as the reduced price will only eat away a part of his profit. He submits that showing of higher duty paid by the assessee only shows that the assessee had passed on the incidence of the higher duty out of the reduced price to the buyers and thus the assumption will be that the payment of higher duty dips into the profit of the assessee and that the assessee has paid that duty reducing his profit.

4. We have heard the rival submissions. We find that the issue is very limited and is within a short compass, i.e. whether the incidence of duty was borne by the manufacturer or the customer. We note that the Ld. Counsel for the appellant has referred to the judgment of this Tribunal in the case of C.C.E. v. Metro Tyres Ltd. .

This Tribunal in that case held as under: 6. Mr. Somasundaram, on behalf of the Department has vehemently contended that on the admission of the Company, the prices which it has displayed in the price list are inclusive of excise duty.

Therefore, according to the learned Counsel, if the prices of Rs. 4.50, Rs. 3.37 and Rs. 3.00 respectively contained an element of excise duty, then that element has to be excluded for the purposes of computation of 25 percent discount. The Ld. counsel, however, did not dispute the fact that when excise duty was charged to the company, the assessable value was taken at Rs. 4.50, Rs. 3.37 and Rs. 3.00 respectively. Now this admission, in our view, is destructive of the contention raised on behalf of the department. If the department was charging excise duty on the footing that the prices shown in the price list were to be treated as the assessable value, it is not open to the Department to contend that there is an element of excise duty included in the price displayed in the price list. If this contention is accepted, it will mean that the Department has been recovering the excise duty on excise duty which forms a part of the price amount. On the admitted position that the company did not change the price which it was charging to its retail consumers prior to 1961, it was clear that there was no element of

excise duty added to the price after the excise duty came to be levied in 1961. The fact that in the price list, the price was stated to be inclusive of the excise duty did not necessarily mean that any particular amount was added to the original price so as to make a provision for the additional burden of the excise duty. We must remember the fact that the Explanation will come into the picture only where 'the element of excise duty if any' is added to the price of any of the medicines. The department has not been able to show and indeed it is impossible for them to show that any element of excise duty has been added to the price of any medicines.

The very fact that the price of the medicines continues to be the same as it was before the excise duty was levied, clearly indicates that no element of excise duty is added to the price of the medicinal ointment.

5. On careful consideration of the above decisions, we note that a detailed examination of the issue is called for specially when detailed sale invoices and challans for the relevant period will be available with the assessee. We note that nothing has been commented on the invoices/bills for the relevant period. The finding of the Department that a composit price does not necessarily show that the incidence of duty has not been passed on to the customer is not based on an in-depth study. A greater scrutiny of the invoices for the relevant period and for the period immediately preceding and immediately following is called for. We consider it a fit case for remand. In the circumstances, we remand the case to the concerned Asstt. Commissioner directing him to examine the case afresh keeping in mind the ratio of the above decision and to decide the issue afresh after giving the appellants an opportunity of being heard in person. He may also keep in mind the findings of the Apex Court in the case of Mafatlal Industries Ltd. .

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