

Adonis India Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-10-2000

Reported in : (2000)(119)ELT68TriDel

Appellant : Adonis India Limited

Respondent : Commissioner of Central Excise

Judgement :

1. Appellants herein are M/s. Onida Savak Ltd. and M/s. Adonis India Limited. M/s. Onida Savak Ltd. are engaged in the manufacture of Colour Television Sets (CTVs) and Washing Machines. Upto 1st April, 1994, the CTVs and washing machines manufactured by them were being sold directly to dealers. Duty on those goods was paid by M/s. Onida Savak Ltd. on the wholesale price charged from those dealers. After April, 1994, they changed the marketing pattern. Entire CTVs and washing machines manufactured were sold to M/s. Adonis India Ltd. who, in turn, sold the sets in wholesale to the dealers. M/s. Onida Savak Ltd. paid excise duty on the sale price charged by them from M/s. Adonis India Ltd. The price realised from M/s. Adonis India Ltd. was less compared to the prices realised by M/s. Onida Savak Ltd. prior to April, 1994 when they sold the goods to the dealers. Consequently, show cause notice was issued demanding differential duty of Rs. 1,76,79,378/- in relation to colour television sets sold during the period from April, 1994 to September, 1995 and a further sum of Rs. 10,62,731/- in relation to washing machines disposed of during the said period. The allegation made in the notice was that the sale to M/s. Adonis India Ltd. was with intent to evade payment

of duty. For the purpose of assessment, the value at which the same goods were sold by M/s. Adonis India Ltd. to the dealers was taken and differential duty claimed. The appellants disputed the claim put forth in the show cause notice, inter alia, contending that the transaction between M/s. Onida Savak Ltd. and M/s.

Adonis India Ltd. was on the basis of principal to principal in the ordinary course of business transaction and that the price was reduced in the case of such sale because M/s. Adonis India Ltd. took up the entire responsibility to market the whole goods manufactured.

Commissioner rejected this contention raised by the appellants and confirmed the demand by order-in-original No. 28/96, dated 6-6-1996.

The said order is under challenge.

2. Learned counsel representing the appellants questioned the correctness of this approach made by the Commissioner in adopting the value notified by M/s. Adonis India Ltd. for fixing the value of the goods for the purpose of assessment to duty under the Excise Act.

According to the learned counsel, even conceding for arguments' sake that the price notified by M/s. Adonis India Ltd. was the price at which it was offered to sale, that price should not have been taken as the value of the goods, because trade discount and cash discount offered by M/s. Adonis India Ltd. to dealers should have been deducted from the amount found by the Commissioner as the assessable value of the goods sold. Learned counsel also disputed the stand taken by the commissioner that M/s. Adonis India Ltd. cannot have an independent existence other than that of M/s. Onida Savak Ltd. This latter argument regarding the connection between M/s. Onida Savak Ltd. and M/s. Adonis India Ltd. was not seriously pursued by the learned counsel before us.

So, the question with which we are concerned in this appeal is whether the Commissioner was justified in accepting the price declared by M/s.

Adonis India Ltd. for the goods to be the valued for assessment under the Excise Law.

3. In *Union of India & Others v. Bombay Tyres International Pvt. Ltd.* reported in 1984 (17) E.L.T. 329 (S.C.), the Supreme Court has categorically stated that discounts by whatever name they are called are to be deducted in finding out the assessable value for the purpose of finding out the duty payable under the Excise Law. Their Lordships have categorically held that trade discount if in fact given, is to be deducted from the value even if it is not so mentioned in the invoices.

The law laid down by the Supreme Court in the above decision; we are pained to note, is not being followed by the Officers of the Central Excise Department. They try to find out some hair-splitting argument to deny the benefit of these discounts to the manufacturers. Since this country is following the rule of law and the law stated by the Supreme Court is the law of the land, we try to impress upon these Officers of the Central Excise Department to give effect to the law stated by the Supreme Court in the decision referred to earlier.

4. While issuing Order Nos. 114-115/96-A, dated 6-11-1996 on the application for stay moved by the appellants, this Tribunal directed the Commissioner to verify whether dealers had availed of various cash discounts and trade discounts covered by the circulars issued by M/s.

Adonis India Ltd. during the relevant period. Pursuant to that direction, Commissioner, Central Excise, Meerut, undertook the examination. By letter, dated 8-5-1997 addressed to this Tribunal, he found that cash discount and trade discount were, in fact, being offered by M/s. Adonis India Ltd. to the dealers and majority of the dealers were availing of those benefits. That report was supplemented by report, dated 13-11-1997. That report covers the entire period taken in the show cause notice, namely, April, 1994 to 30th September, 1995.

The cash discount and trade discount were being availed of by the trade and the trade was aware of these discounts prior to the completion of the contract under which the goods were sold. The actual trade discount which was extended to the dealers, according to the Commissioner, could not be found out because M/s. Adonis India Ltd. were selling goods manufactured not only by M/s. Onida Savak Ltd. but also of M/s. Monica Electronics Ltd. From this reports it is seen that the entire goods manufactured by M/s. Onida Savak Ltd. and M/s. Monica Electronics

Ltd. were taken by M/s. Adonis India Ltd. who, in turn, sold to dealers. In effecting this sale to the dealers, M/s. Adonis India Ltd. was offering cash discount and trade discount. Now, we are told that a similar show cause notice has been issued to M/s. Monica Electronics and adjudication proceedings are in progress. That matter is pending before the Delhi Commissionerate of Central Excise.

5. The number of colour television sets and washing machines manufactured by M/s. Onida Savak Ltd. which were marketed through M/s.

Adonis India Ltd. is known to the Department. From the verification reports now submitted to the Tribunal, it is crystal clear that M/s.

Adonis India Ltd. was offering cash discount and trade discount when they sold the goods to the dealers. Those discounts are to be deducted from M/s. Adonis India Ltd.'s sale price to find out the assessable value. Even if a small percentage of dealers is not availing of the cash discount, the entire cash discount must be deducted in view of Collector of Central Excise, Meerut v. Stallion Shox Ltd. & Stallion Shox Ltd. v. Collector of Central Excise, Meerut and the Department is not to deny deduction because the report now before us shows that majority of the dealers were, in fact, availing of the cash discount and trade discount offered by M/s. Adonis India Ltd. In the case of trade discount, actual amount of discount passed on to dealers must be given credit to in finding out assessable value. This exercise should be undertaken by the Commissioner and the differential duty claimed from M/s. Onida Savak Ltd. While doing so, if M/s. Adonis India/M/s.

Onida Savak are legally entitled to any other deductions as per the law laid down by the Supreme Court and this Tribunal, benefit of that deduction must also be extended to the parties. In view of this conclusion arrived at by us, the differential duty will come to a lesser amount compared to the original demand which has been confirmed, by the impugned order. Since the entire facts were not properly taken into consideration and the correct law applied, we do not find any justification for upholding the penalties imposed by the impugned orders. The penalties imposed are set aside and the matter is remanded back for de novo decision in the light of the observations made earlier in this order for computation of the differential duty payable by M/s.

Onida Savak Ltd. Since this matter is long pending one, the entire exercise must be completed as expeditiously as possible and at any rate within three months from the date of receipt of a copy of this order.

We make it clear that before passing order, a reasonable opportunity of being heard may be extended to the appellants.

6. Depending upon the final assessment of the differential duty payable by M/s. Onida Savak Ltd., the amount deposited pursuant to order of this Tribunal may be adjusted.

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