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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-12-2000

Reported in : (2001)(74)ECC614

Appellant : Lml Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Order-in-Original No. CCE(ADJ)VLS/9/2000 dated 15/16-3-2000 of the Commissioner of Central Excise (Adjudication), New Delhi is the subject matter of the appeal filed by the assessee and cross objection of the Revenue.

2. The issues in dispute were whether the share borne by the dealers in the advertisement of the scooters manufactured by LML Ltd. was to be added to the price of the scooters while assessing them to duty and whether any duty was payable in regard to reimbursements made by LML Ltd. to dealers for the free after sale services rendered by them. The case of the Revenue with regard to the cost of servicing was that the dealers of the scooters (who actually rendered the services to the customers) were being reimbursed less than the amount reimbursable according to the rate fixed by the appellants. The appellant had fixed varying rates of service charges for cities and towns where the dealers were located.

3. Ld. Counsel for the appellants have submitted that there is no legal basis to the demand made in respect of service charges. He produced before us approved

price lists covering the assessments in question, being price list No. 69/92-93, price list No. 45/92 etc. Ld. Counsel explained that it is clear from these price lists that duty was being paid at a consolidated price at which the goods were being sold by the manufacturer. No deduction whatsoever had been made from the consolidated price towards free services, while fixing the assessable value. Ld. Counsel contended that when reimbursement for free services was out of the consoilated price on which duty had been paid, it was of no consequence to the Revenue whether the reimbursement were uniform or at different rates. He also clarified that the variations made no difference to Central Excise duty as the lower rates of reimbursements for some towns were neutralised by higher rates for other towns. With regard to the sharing of advertising cost, the appellant's contention is that it is settled law in the light of the decision in Philips India [1997 (91) E.L.T. 540 (S.C.)] that if cost of advertisement is shared between the manufacturer and the dealer, the dealer's share is not to be added to the price of the goods for the purpose of fixing the assessable value for payment of Central Excise duty.

4. Ld. DR submitted that the reimbursment made by the appellants in the present case did not conform to the rates which they had themselves fixed citywise. Therefore, the lower rate was an indirect flow back to the manufacturer.

5. From the records, it is seen that, during the relevant period, the assessee was paying duty on the consolidated price of the scooter. No deductions are found to have been claimed or allowed from this consolidated price. In such a case, it is of no consequence for the assessment of the scooter whether any reimbursments were made at all and whether the reimburs-ments were uniform. The demand is, therefore, not sustainable. We had occasion to consider this issue in an earlier appeal filed by Commissioner of Central Excise, Meerut against M/s.

Birla Yamaha Ltd. In that case, vide our Final Order Nos. 641-645/99 dated 18-5-1999 [1999 (112) E.L.T. 725] we held that since the manufacturer was paying duty on the gross price and the cost of free service was being reimbursed to the dealers firm that gross price, no additions are required to be made to arrive at the assessable value.

The present case is covered by that decision of ours. The question of addition towards share of the dealers on advertisement of the goods also remains covered in favour of the assessee by the decision of the Supreme Court in Philips India case [1997 (91) E.L.T. 540].

6. In view of the above findings, the appeal of M/s. LML Ltd. is allowed with consequential relief to the appellants and the cross objection of the Revenue is rejected.

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