Usv Limited Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-23-2001

Reported in : (2002)(139)ELT641Tri(Mum.)bai

Appellant : Usv Limited

Respondent : Commissioner of Central Excise,

Judgement :

1. The question for consideration in this appeal is the liability to duty of glipizide, a bulk drug, manufactured by the appellant. The appellant used this drug in the manufacture of glynase, which it sold as a patent and proprietary medicament. Glynase was exempt form duty by notification 30/88. Therefore, glipizide captively consumed by the appellant in the manufacture of glynase was required to pay duty. In determining its value, therefore, the department has to resort to the provision of Rule 6(1)(b) of the Valuation Rules. The question that arises of consideration is which of the different prices, at which the appellant sold the glipizide to buyer, should be applied.

2. The department has applied the prices at which the appellant sold the goods for the quantity cleared during that period. For the sales from March 1993 till February 1994 the department applied the price of Rs.51,000/- per kilogram, which is the price at which the appellant sold the two kilogram of the goods to Torrent Pharmaceutical in March 1993. There were no sales between March 1993 and February 1994. In February 1994, the appellant sold four kilogram to Vitara Chemicals at Rs.50,000/- per kilogram. The department therefore applied this

price for the remaining period.

3. The contention of the appellant is that the sales to Torrent Pharmaceutical and Vitara Chemicals were on smaller quantity. It sold 1021.680 kilogram at Rs 45,425.50 to American Products Co Ltd during the period from 1989 to February 1992. It is this price that should be applied. We find ourselves unable to accept this proposition. The contention that the price at which the appellant sold the goods to American Products Co Ltd was lower because a larger quantity was sold, presupposes a knowledge by the appellant of the intention, when it first sold the goods to American Products and the intention of the buyer to buy the entire quantity over a period of three years. The representative of the appellant states that these state of affairs did not exist. There was no earlier contract or arrangement between the two parties. That being the case, each quantity that is sold at a particular time to the buyer that has to be taken into account.

Besides, the appellant did not have a schedule of quantity discount as accepted by the representative for the appellant. In these circumstances, the department was correct in basing the value under Rule 6 on the prices at which the appellant sold the goods during the period contemporaneous to the period that the appellant captively consumed the goods. We therefore find no ground for interference.