

Commissioner of Central Excise Vs. Escorts Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-2002

Reported in : (2002)LC1098Tri(Delhi)

Judge : K Usha, N T C.N.B.

Appellant : Commissioner of Central Excise

Respondent : Escorts Ltd.

Judgement :

1. Both Revenue and assessee are in appeal. The grievance of the assessee is that the impugned orders are in error in holding that duty was payable in respect of the labour cost involved in the replacement of parts during warranty period. The Revenue is in appeal against the finding of the Commissioner that advertisement expenditure incurred by the dealers of the assessee are not required to form part of the assessable value.

2. The assessee is a manufacturer of Tractors. They sell the Tractors to their dealers and the dealers sell to consumers. Tractors are covered by warranty.- The parts required for replacement during warranty period are supplied by the assessee manufacturer. The labour services for the replacement are incurred by the dealers. The issue in dispute is whether the labour cost involved in such replacement activity is required to form a part of the assessable value of the Tractors. Such labour cost has been quantified at Rs. 250/-per Tractor.

3. The impugned order has confirmed the duty demand relying on the decision of the Tribunal in their own case, which has been reported in 2000 (124) E.L.T. 496.
4. The assessee has submitted that the issue of includibility of labour cost had been decided in favour of the assessee by the Tribunal in the case of Telco Ltd. v. Commissioner of Central Excise, Pune - 2000 (121) E.L.T. 224 and that view of the Tribunal was confirmed by the Apex Court. [2001 (130) E.L.T. (A260)].
5. In the facts of the present case, there is no dispute that goods had been sold on ex-factory price basis to the dealers. During warranty period parts are replaced free. No payment is received by the manufacturer towards labour cost involved in the replacement of parts.

In such a case, no additional realization by the manufacturer is involved requiring the inclusion of additional realization in the assessable value of the goods. While dismissing the appeal of the Revenue in, the Telco case the Supreme Court observed as under :- "We have heard learned counsel and seen the relevant papers, including the owner's manual and service book. We are not at all satisfied that there is any payment, whether before or after, in regard to labour for the free service that the dealer renders to cars of the respondent's manufacture.
6. The appellants' case is covered by the rule laid down in the above decision of the Apex Court. The contrary decision of this Tribunal in the appellants' own case, reported in 2000 (124) E.L.T. 496 cannot continue to have effect after the judgment of the Apex Court.
7. With regard to the Revenue's contention that advertisement expenditure incurred by the dealers of the goods is required to be included in the assessable value of Tractors, it is seen the Commissioner has ordered exclusion of the advertisement expenditure incurred by the dealers based on the decision of the Apex Court in the case of Philips India Ltd. [1997 (91) E.L.T. 540 (S.C)]. The Revenue's appeal suggests that the order of the Apex Court in Philips India relates only to advertisement expenditure in respect of audio products and that in respect of all other goods, advertisement expenditure incurred by the dealers is to form a part of the assessable value of the goods in view of the judgment of the Apex

Court in the case of Union of India v. Bombay Tyre International [1983 (14) E.L.T. 1896 (S.C.) - 1984 (1) SCR 347]. This plea is on the basis that the aforesaid two judgments of the Apex Court on the issue of inclusion of advertisement expenditure in the valuation of the excisable goods are required to be harmoniously construed.

8. The Revenue's appeal assumes that the two decisions of the Apex Court are in conflict. We find no warrant for that assumption. The observations of Supreme Court as relied upon by the Commissioner (Appeals) are as under:- "It seems clear to us that the advertisement which the dealer was required to make at its own cost benefited in equal degree the appellant and the dealer and that for this reason the cost of such advertisement was borne half and half by the appellant and the dealer. Making a deduction out of the trade discount on this account was, therefore, uncalled for." 9. The above observation of the Supreme Court contains the general principle relating to the issue of inclusion of advertisement cost incurred by dealers. It is a rule of valuation applicable to all goods.

There is also no conflict with the observations in the Bombay Tyre International judgment inasmuch as that order held that advertisement and other costs incurred by the manufacturers are required to be included in the assessable value of goods. The Apex Court did not hold in Bombay Tyre International judgment that all advertisement expenditure incurred by all the dealers at various tiers of distribution are required to be included in the assessable value. Thus, we find no merit in the appeals filed by the Revenue.

10. In view of the foregoing, appeals of assessee are allowed with consequential relief and appeals filed by the Revenue are dismissed.

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