

Commissioner of Central Excise Vs. Mpi Ethical Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-21-2003

Reported in : (2003)(159)ELT1061Tri(Mum.)bai

Judge : S T Gowri, A Wadhwa

Appellant : Commissioner of Central Excise

Respondent : Mpi Ethical Pvt. Ltd.

Judgement :

1. The assessee was engaged in the manufacture of medicament and availed of the exemption contained in notification 245/87. The notification provides for partial exemption from duty after allowing discount of 15% of the retail price of the medicine determined by the Drug Price Control Order. Exemption in the notification provides that in calculating the value of the medicine "the amount of excise duty payable if any" shall be deducted before allowing the discount from retail price. The assessee deducted from the retail price not only the basic excise duty but the special excise duty payable thereon. This was objected to by issue of notice. The Assistant Commissioner confirmed the proposal in the notice. On appeal, the Commissioner (Appeals) accepted the assessee's claim and set aside the Assistant Commissioner's order. Hence this appeal by the Commissioner.

2. The ground in the appeal is that the term "excise duty" referred to in the Explanation refers only duty payable under the Central Excise Tariff Act and therefore would not include special excise duty payable in terms of the relevant

Finance Act. The departmental representative cites in support the judgment of the Supreme Court in *Union of India and Ors. v. Modi Rubber Ltd* 3. The issue is already covered by the decision of this Tribunal in *Ranbaxy Laboratories Ltd v. CCE* 1999 (81) ECR 485. In that decision, the Tribunal, after considering the notification, said that "on the language of the notification read in the light of Section 4(4)(d)(ii) of the Act, it is clear that the excise duty liable to be deducted for determination of assessable value would be not only excise duty under the Central Excise Act, 1944 but also special excise duty under the relevant Finance Act." The judgment of the Supreme Court that the departmental representative relies upon is not relevant to the issue.

The Court held in that the exemption contained in notification 123/74 applies only to basic excise duty payable because it referred to duty.

The Court came to the conclusion, after considering Rule 8(1) of the Rules, the expression used in the explanation is amount of excise duty without specifying any enactment.

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