

Apex Traders Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-21-2003

Judge : K Usha, M T K.D.

Appellant : Apex Traders

Respondent : Cce

Judgement :

1. Appellants M/s . Apex Traders, in the instant appeal, are challenging the correctness of the impugned Order-in-appeal passed by the Commissioner (Appeals), Ghaziabad, whereby Order-in-original 63/98 dated 26.5.98 passed by the Assistant Commissioner has been set aside.

2. The issue for consideration before the Assistant Commissioner was the quantum of deduction to be permitted on account of excise duty, sales tax and freight for the purposes of arriving at the assessable value of aerated water, manufactured and cleared by them. In the said order, the Assistant Commissioner also decided that abatement claimed by the party from sale price on the rentals on containers (ROC) was permissible in terms of findings contained in the Order-in-original No.34/ComMr. /97 dated 17.6.97 in the case of M/s . Coolade Beverages Ltd., which in turn was based on Supreme Court's decision in the case of CCE v. Indian Oxygen Limited.

3. It was pleaded before the Assistant Commissioner that deductions on account of freight was claimed at Rs. 0.60 per crate and this was reflected in their depot

challans also but this freight was into charged in their final invoices due to commercial reasons although they incurred much higher expenditure on this count. It was pleaded that assessable value be approved based on the factory gate sales which work out to the tune of 25% of the total sale to unrelated and independent buyers. C.A's certificate dated 7.7.95 was produced wherein he element of freight per crate was certified at the rate of Rs. 3/- for the period April, 94 to March, 95 (till the closure of the factory). The Assistant Commissioner accepted these submissions and approved the price list based on the sale price prevalent at the factory gate.

4. The department challenged this order before the Commissioner (appeals). It was stated that no facts were discussed to apply the factory gate price in respect of aerated water stock transferred to depots : that there was failure to appreciate that even if there as some ex-factory sales, they were not sufficiently representative of ordinary sale to independent buyers; that Order No. 34/ComMr. /97 dated 17.6.97 on which reliance has been placed by the Assistant Commissioner (while permitting ROC) was under review. From the above, it was apparent that sole reason for challenging the order dated 26.5.98 of the Assistant Commissioner was that the Order-in-original No. 34/ComMr.

/97 dated 17.6.97 in the case of M/s . Coolade Beverages Ltd., Sahibabad which decided the issue of rent on containers in favour of the manufacturer, has been challenged by the revenue before the Tribunal. The basic principles contained in Commissioner's order 34/ComMr. /97 were followed by the Assistant Commissioner in Order-in-original dated 26.5.98.

5. Since the appeal filed by the Department against A.C.'s order-in-original dated 26.5.98, before the Commissioner (Appeals) has been allowed by the said Commissioner (Appeals), and the deductions permitted by A.C. have been denied, the appellants have filed the instant appeal against the Commissioner (A)'s order before the Tribunal.

7. On perusing the impugned Order-in-appeal, it is noticed that, so far as the issue of rent on containers (ROC) is concerned, the same is already settled. Order No. 34/ComMr. /97 dated 17.6.97 was challenged by the Revenue in the appeal before

the Tribunal and the Revenue's appeal against the same was dismissed vide Tribunal's decision reported in 2000(116) ELT-622 in the case of CCE, Meerut-I v. Coolade Beverages Ltd. Therefore, the findings in the impugned order-in-appeal on this issue are set aside.

8. So far as the deduction on account of actual freight is concerned, it has been brought on record in the Order-in-original that, the claim was only to the extent of Rs. 0.60 per crate and the actual expenditure per crate was certified at Rs. 3/-. There is no finding in the order of the Commissioner (Appeal) to counter this evidence. In the Order-in-original, it has been mentioned that 24.7% of the total sales are effected at the factory gate. It is also mentioned that, depot price and the factory gate price are the same. Hence, the assessment has to be necessarily done at this price. There is no finding in the Order-in-appeal to suggest that the factory gate price does not represent the sales to independent buyers. It is only observed that the Assistant Commissioner has not dealt with this aspect. The observation is devoid of any finding as to how there is failure on the part of the Assistant Commissioner in treating the factory gate price as "price to independent buyer." 9. Accordingly, we hold that the impugned order passed by the Commissioner (Appeals) is not sustainable and deserves to be set aside.

10. Consequently, we set aside the impugned order-in-appeal and allow the appeal filed by the appellants. (Operative part of the order was pronounced in open Court on 21.8.03).

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