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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-11-2003

Judge : A Wadhwa, S T S.S.

Appellant : Johnson and Johnson Ltd.

Respondent : The Commissioner of Central

Judgement :

1. The appellants have filed an appeal against the order of the Commissioner (Appeals) vide his impugned order has come to the following findings:- "I find from a scrutiny of the contract entered into by the appellant an DGMHS, UP, that one of the conditions is that "UP Govt.

1999-2000' must be indelibly printed on each label amp vial phial Foil boxes tin container and outer carton. I find that 'UPG 1999/2000' is clearly printed on the copy of the label that has been submitted by the appellants at Annexure G of their appeal memorandum. Thus it is clear that the said product has been specially packed for exclusive use of servicing the hospitals of U.P. Government. Furthermore, by no stretch of the imagination can DGMHS be considered a retail outlet. Hence proviso a (iii) to Rule 34 of Standards Of Weights And Measures (Packaged Commodities) Rules, 1977 is not applicable in this case. On these grounds it is clear that Standards Of Weights And Measures (Packaged Commodities) Rules, 1977 would not be applicable to the product in question and there is no statutory requirement to print the MRP on the goods specially packed for DGMHS. Accordingly, the product would not fall under the purview of Section

4A and cannot be assessed on the basis of MRP. This is also supported by the Adjudicating Authority's observation in respect of purchase order No. V/II:P/B.N/99/2000 dated 07/07/2000 of the DGMHS. The contract price of Rs. 505/- per jar after permissible deductions would be in the nature of transaction value and would serve on the basis of assessable value for assessment of excise duty. It is the appellant's contention that interest under Section 11AA is not applicable to the present case, but they have not advanced any reasoning for this stand.

I reject appellant's contention that the product would be assessed on the basis of MRP of Rs. 505/-. The assessable value for the purpose of calculation of Excise duty would be the contract price of Rs. 505/- per jar with permissible deductions including the Central Excise duty and other taxes that may be included in the contract price. The jurisdictional Assistant/Deputy Commissioner shall revise the demand of duty accordingly. The impugned order in original stands modified to that extent." 2. After hearing both sides on the stay application and considering the issue we at this prima-facie stage found: (a) The notice of demand issued in this case was for the difference of duty required to be demanded under Section 11A based on the MRP declared on the goods in question which are notified as products under Section 4A. This declaration as alleged in the show cause notice should have been Rs. 910/-, however, the appellants had declared MRP 505/- for certain products sold to UP State DGMHS and had discharged duties worked out as per the declaration of Rs. 505/-. The lower authority has confirmed the demand of Rs. 97,200/- and also imposed a penalty under Rule 173Q of Rs. 97,200/-.

Prima-facie at this stage, we do not find a strong case in favour of the appellants as regards the determination of duty. As regards the quantum of penalty and levy thereof in view of the order of the Commissioner (Appeals), especially in the last sentence of the order as pointed out.

(a) In view of the prima-facie concluded reached by us, as regards the liability of the duty, we would consider the deposit of Rs. 97,200/- to be adequate in this case to meet the requirements of Section 35F of the Central Excise Act, 1944. On such deposit being made and compliance thereof reported by 08th October 2003,

further deposit of penalty would stand waived and recovery thereof stayed.

3. The stay application is disposed of in above terms. Matter to come up for reporting compliance on 08th October 2003.

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