

Zyg Pharma Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-04-2004

Reported in : (2004)(93)ECC537

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

Appellant : Zyg Pharma Ltd.

Respondent : Cce

Judgement :

1. In this appeal the issue raised is whether the advertisement charges incurred by M/s. Fulford India Ltd. buyer of six items of P&P medicines manufactured by the appellant is to be included in the assessable value of the product. Commissioner (Appeals) following the ratio of the decision of this Tribunal in the case of Alembic glass Industries Ltd. vs CCE reported in 2002-TAXINDIAONLINE-82-CESTAT-MUM took the view that the advertisement charges incurred by the buyers has to be included in the assessable value.

2. It is contended on behalf of the appellant that the decision in Alembic Glass Inds. Ltd. has to be understood in the facts of the case and that the ratio of the decision of the Hon'ble supreme Court in the case of Philips India Ltd. reported in 2002-TAXINDIAONLINE-127-SC-CX be applied to the appellant's case. Ld. Counsel for the appellant took us through the decision of the Alembic Glass Inds. and contended that the facts as detailed in the order would clearly show that 'Darshak', the buyer of year glass was doing the advertisement on behalf of the

Alembic Glass Inds. Statements made by the officers of Alembic Glass Inds. would clearly show that this was done as part of its cost reduction exercise and there is a shifting of advertisement and promotion cost to Darshak. Under these circumstances, the Tribunal took the view that price was not sole consideration. According to the appellant, appellant as well as its buyer M/s. Fulford India Ltd. are incurring expenditure on sales promotion, and there is nothing to show that its transactions with fulford India Ltd. is not on principal to principal basis. Under these circumstances, it is contended that the ratio of the decision of Philips India Ltd. would be directly applicable.

3. Ld. DR on the other hand would contend that as regards six items of the P&P medicines produced by the appellant, the sale is entirely to M/s. fulford India Ltd. and expenditure incurred by M/s. Fulford India Ltd. has to be treated as expenditure incurred for the benefit of the appellant, therefore, such amount has to be added to the assessable value of the process.

4. we find merit in the contention raised on behalf of the appellant.

On going through the decision in Alembic Glass Inds. Ltd. we are inclined to accept the submissions made on behalf of the appellant. On the other hand the Hon'ble supreme Court in the case of Philips India Ltd. held that when the manufacturer is sharing the advertisement expenses with dealers, such advertisement cost cannot be added to the assessable value of the product cleared by the assessee. In the present case, we find that there are no circumstances which would justify the ratio of the decision in Alembic Glass Ind. to be applied. we, therefore, find no reason to affirm the finding of the commissioner (Appeals) that the advertisement charges incurred by M/s. Fulform India Ltd. has to be added to the assessable value of the six products sold to M/s. fulford India Ltd. In the result, we set aside the impugned order and allow the appeal. The appellant has already deposited the entire duty portion of the demand. It will be entitled to refund of the above amount.