Commissioner of Central Excise Vs. Johnson and Johnson Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-07-2004

Judge : A Wadhwa

Appellant : Commissioner of Central Excise

Respondent : Johnson and Johnson Ltd.

Judgement :

1. After hearing both the sides, I find that the issue involved in the matter is whether "Catch Covers" for Physician Samples are eligible modvatable inputs or not. Originally a show cause notice was issued to the respondent in July 2000 proposing to deny the credit on the said catch covers on the ground that the same is not admissible inasmuch as the catch covers cannot be considered as packing material under Rule 57B.2. Shri Rohan Shah, Ld. Advocate for the respondents informs that prior to the present show cause notice, proceeding were initiated against them by way of issuance of earlier show cause notice the order Passed by the Deputy Commissioner holding in their favour that catch covers is a packing material for the physician's samples and dropping the proceeding.

3. The said order of the original adjudicating authority was not challenged by the Revenue. As such it became an accepted position that such catch covers were eligible modvatable inputs. However, in the present proceeding the original adjudicating authority confirmed the demand against them by holding that the value of such catch covers is not included in the assessable value of the physician samples. On an appeal against the said order, Commissioner (Appeals) referred to

an earlier Order-in-Appeal laying down that the value of the catch covers is required to be added in the value of the physician samples and as such he set aside the order of the lower authority.

4. The Ld. Advocate submits that they have accepted the earlier order of the Commissioner (Appeals) as regards the inclusion of the cost of the catch covers in the physician samples, though he fairly admits that an appeal has been filed before the Tribunal. The same is not challenging the basic legal issue but clarifies that the same relates to the method to be adoption for valuation of physician samples. In other words he submits that the challenge is not to the legal issue of inclusion of cost of the catch covers in the value of the physician samples.

5. In view of the above submission made by the Ld. Advocate the very basis of the Revenue's appeal is no longer available to them. The Ld.

Advocate also referred to a certificate issued by Chartered Accountant to the effect that the value of the catch covers is included in the value of the physician samples.

6. In view of the above submissions made by the Ld. Advocate that they have accepted earlier order of the Commissioner (Appeals) in principle on the point of issue of inclusion of the value of the catch cover in the physician samples, I find that the very basis of the Revenue appeal become non available to them. Accordingly, the appeal filed by the Revenue is rejected.