

Commissioner of Central Excise Vs. Asian Paints (India) Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-01-2004

Judge : J Balasundaram, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Asian Paints (India) Limited

Judgement :

1. The Respondents herein are engaged in the manufacture of paints, varnishes, enamels, falling under TI 14 and TI 68 of the schedule to the erstwhile Central Excise Tariff. Till December, 1978 they were paying duty on inputs value at the time of clearance and the goods were so assessed; and thereafter they switched over to payment of duty in respect of products manufactured by them on the assessable value computed on the basis of manufacturing cost + manufacturer's profit. In September, 1979 provisional approval was refused by the Assistant Collector who directed that the final assessment should be done on the basis of invoice value. The assessee preferred an appeal before the Collector (Appeals) who by his order dated March, 1981 remanded the case for denovo adjudication. Pursuant to the decision of the apex Court in the case of Bombay Tyre International in May, 1983 the department finalised the assessment and issued 54 demands to the assessee. Appeal was preferred to the Collector (Appeals) contending that the discounts claimed were deductible in arriving at the assessable value in accordance with the above apex Court judgment. In February, 1984 the Collector (Appeals) remanded the case once again for fresh adjudication

in the light of the above judgment of the Supreme Court, after verifying the records of the assessee. Vide the order-in-original dated 13th September, 1984 / 15th October, 1984 the Assistant Collector allowed the following deductions: (4) Discounts on account of 'scheme' such as product rebate and bulk pack discounts; (7) Turnover tax, octroi and transit insurance and disallowed the following deductions: 2. The department as well as the assessee preferred appeals before the Collector (Appeals) who decided all appeals by common order-in-appeal dated 28/03/1988 allowing deductions on account of additional trade discount, cash discount to the extent actually allowed, discount on account of scheme such as rebate and bulk pack discount; town commission; and special deals and special discounts. He disallowed following deductions: 3. The issue came up before the Tribunal which vide its final order No.279-283/98-A dated 24/02/1998 set aside the Collector (Appeals) order and remanded the case for denovo consideration as follows: "In view of the non-speaking in nature of the order, the order has become violative in principle of natural justice and therefore, the only course open is to set aside the Collector's order and remand the matter for denovo consideration. The Commissioner (Appeals) shall re-examine the party's claim in the light of evidence and the citations referred to by them. The Commissioner shall also examine the issue pertaining to time bar nature of the revenue appeal before him. The same shall be decided after giving due notice to the appellants and granting them a personal hearing. Thus all the appeals are allowed by remand to the Commissioner (Appeals). The Commissioner shall decide the case within a reasonable period as the matter are old ones." 4. Accordingly the Commissioner (Appeals) decided the case afresh vide the present impugned order wherein deduction on account of cash discount and bonus was allowed on the basis of earlier order-in-appeal No. 380-384 dated 31/12/2001 and he disallowed deductions on account of town commission and special deals/discount. Hence this appeal by the Revenue challenging the allowing of the deduction on account of cash discounts and bonus and also challenging the impugned order on the ground that the Commissioner (Appeals) has not given any finding on rebate and bulk pack discount.

5. We have heard both sides. We find that although in the grounds of appeal, it is stated that the department as well as the assessee preferred appeals before the

Tribunal which were disposed of by the Tribunal's order dated 24/2/1998, a perusal of the order of the Tribunal shows that actually only the assessee filed appeals to the Tribunal against the order-in-appeal dated 28/03/1988 (appeal Nos.

E/794/88-A and E/3740-3741/88-A along with appeals against other orders and the Revenue only filed cross-objections No. E/CO-72/97-A.6. Since appeals were filed only by the assesses before the Tribunal the reference in the last para of the Tribunal's order to 'examination of the party's claim' can only refer to claim of the assessee. The Tribunal has not directed re-consideration of department's claim that rebate and bulk pack discount should not have been allowed by the Collector (Appeals) in his order dated 28/03/1988 and in fact the Tribunal was not required to do so in the absence of any appeal by the Revenue before it. We therefore proceed to examine only the admissibility of cash discounts and bonus.

7. We find that the Commissioner (Appeals) has relied upon his earlier order-in-appeal No. 380-384 dated 31/12/2001 and does not give any independent reasoning in the present impugned order. We have perused the copy of the order dated 31/12/2001 and find that cash discount has been held to be admissible in the light of Tribunal's order No.C-II/3054-55/01/WZB dated 26/11/2001 in the case of the same assessee following the ratio of the apex Court judgment in the case of Goodlass Nerolac Paints. The objection of the learned SDR that cash discount ought not have been allowed as the price list did not declare the wholesale price lose significance in the light of the orders cited supra which have been relied upon for holding that cash discount is permissible deduction from the assessable value. We therefore see no reason to interfere with the order relating to cash discount.

8. Regarding bonus also the order does not call for any interference as bonus to dealers has been held to be permissible deduction from assessable value in the case of Goodlass Nerolac Paint.

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