G.M. Enterprises Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-27-2004

Reported in : (2004)(117)LC577Tri(Delhi)

Judge : S Kang, Vice, N T C.N.B.

Appellant : G.M. Enterprises

Respondent : Cce

Judgement :

1. The appellant is a job worker for Gillete India Ltd. It receives parts from Gillete India Ltd. and assembles razors out of them. Those razors are subject to excise duty. The razors are packed along with free supply (from Gillette) blades by blister packing. While paying duty on razors, the appellant claimed CENVAT credit in respect of duty paid on the free supply blades (which are packed along with the razors). Under the orders impugned in these appeals. Central Excise authorities held that no credit was available in respect of free supply blades, inasmuch as such blades are not inputs going into the manufacture of razors under assessment. It was also rioted that blades in question are free supply (promotional) items and their value is not included in the assessable value of the razors under assessment. The lower authorities were following the order of this Tribunal in the case of another job worker in Gillette India, namely, G.S. Enterprise , while passing the impugned order. The Commissioner (Appeals) has also noted that the said order of the Tribunal has been confirmed by the Apex Court 2003 (151) ELT page A 297.

2. The contention of the appellant in the present appeals is that the earlier order of the Tribunal is not applicable to the present case, inasmuch as that order was in regard to Modvat credit and the present dispute is in regard to CENVAT Credit. It is being pointed out that definition of 'input' under CENVAT Credit Rules, 2001 specifically includes 'accessories of the final products cleared along with the final product', while, under the earlier Rules, accessories had not been specified. A factual difference is also being relied upon i.e. in the present case, free supply blades are compatible with the razors under assessment, while free supply blades in the case of G.S.Enterprises were not compatible with the razors under assessment.

3. We have perused the records and have heard both sides. We have also been shown samples of the razor packings under assessment. They are marketed under names like "NEW SAVAGE SAFETY RAZOR CLICK-ACTION RAZOR WITH BALANCE HADLE", "NEW WILKINSON SWORD PREMIUM METAL HEAD FOR SAFER CLOSER SHAVES"; "7 O' CLOCK - PERMASHARP STAINLESS"; and "NEW WILKINSON SWORD CLICK RAZOR" internationally designed for closer shave". As already noted, these razors are blister packed along with blades. About the free supply blades, the packs state 'FREE 2 SAVAGE BLADES', 'FREE 2 WILKINSON SWORD Premium Blades', 'FREE 5 BLADES WORTH Rs. 23.50', 'FREE 1 WILKINSON STAINLESS BLADE'. It is, thus, clear from the packings that the items under sale at the declared MRPs are safety razors and blades are under "free" supply. It is noted that in respect of one particular packing of plastic razor, the MRP of the razor is Rs. 23.50, which is the same as the price of 5 free supply blades. Thus, in respect of this packing, as a matter of fact, no duty will be payable on the razor manufactured by the assessee once the credit of duty in respect of the free supply blades is given as Cenvat credit. Clearly, there is no value addition by the input (blades) so as to satisfy the requirement of Value Added Tax. In the tax relief claimed on the input accessory, effectively makes the newly manufactured item, (razors) tax free.

4. As already noted, the lower authorities have passed the order following an earlier order of this Tribunal on an identical case. There also, the blades were being packed along with razors which were being assessed. We held that the

blades which were supplied free cannot be treated as input in the manufacture of razors under assessment and no relied was allowed. The position is the same in the present case also despite the fact that blades in the present case qualified to be accessories for the razors, since both products are compatible.

Clearly, the issue for consideration is the status of free supply items which assessing manufactured goods to duty and not whether the blades are necessary. The packings make it clear that these blades are supplied free and that the supply is not as "accessory of final product cleared along with final product." The exclusion of the price of the blade from the price of the razor also makes this clear, because the normal practice in trade with regard to supply of products along with accessories is that the price of the accessory remains included in the price of the manufactured item and thus, satisfies the requirement of being an input. The free supply items have no concern with the manufacture and assessment of the manufactured item, razors. In the facts of the case, they are not figuring as input and cannot claim Cenvat credit.

5. In view of what is stated above, we do not find any justification to differ with our earlier decision in the case of G.S. Enterprises . Accordingly, the appeals fail on the issue of claim for Cenvat credit. However, relief is merited with regard to penalty, since the mere claiming of CENVAT relief involved no offence.

Accordingly, the penalty imposed is set aside and the appeals succeed to that extent.