

Cce Vs. Polar Industries Ltd.

Cce Vs. Polar Industries Ltd.

SooperKanoon Citation : sooperkanoon.com/36906

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-2004

Reported in : (2004)(117)LC1092Tri(Delhi)

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

Appellant : Cce

Respondent : Polar Industries Ltd.

Judgement :

2. The Revenue filed this appeal against order-in-appeal passed by the Commissioner (Appeals) whereby it was held that Turn Over Tax is deductible from the assessable value of the goods manufactured by the respondents. The Commissioner (Appeals) also held that the advertisement expenses incurred by M/s Polar International Ltd. are not to be includible in the assessable value of the goods manufactured by the respondents.

3. The contention of the Revenue in respect of Turn Over Tax is that the Revenue filed appeals against the orders passed by the Tribunal whereby the Tribunal held that Turn Over Tax is to be deductible from the assessable value of the goods under Section 4 of the Central Excise Act. The Revenue had not produced any order staying the operation of earlier order passed by the Tribunal. We find no merit in the appeal in respect of Turn Over Tax. In respect of the advertisement taxes the Commissioner (Appeals) in the impugned order followed the earlier order of the Tribunal in respondent's own case i.e. Final Order No. 725/ 1999-A dated

26.5.1999.

We have perused the records and have considered the submissions made by both sides. We find that the order to load the assessable value by an amount equal to the advertisement cost is not maintainable on the basis of the finding that the persons are related parties. This finding is, therefore, to be seen in the context of the relationship between the buyer and the seller. Nothing has been brought on record to show that the advertisement is being carried out by the buyer at the instance of or on behalf of the manufacturer. Both the parties are limited companies. The brand name which is popularized through advertisement by the buyer belongs to a third part which is Polar Fans. Therefore, a finding that the popularization of the brand name Polar is for the benefit of the present appellants is also not sustainable. In the circumstances, we are of the opinion that there was no legal basis to the addition of the advertisement cost of the dealer to the assessable value of the goods. The appeal succeeds and is allowed with consequential relief to the appellant. We are not going into the other issue like time bar, as the appeal is allowed on merits.

5. In the present case also, in the adjudication order, it was mentioned that the advertisement expenses are incurred by M/s. Polar International and there is no evidence produced by the Revenue which shows that the facts and circumstances has been changed from the earlier order passed by the Tribunal. In view of the above decision of the Tribunal, we find no merit in the appeal in this regard also. The appeal is dismissed. The cross-objections are also disposed of as indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com