

Cce Vs. Nirma Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-02-2005

Reported in : (2005)(191)ELT1058Tri(Mum.)bai

Judge : R Abichandani, M T K.C.

Appellant : Cce

Respondent : Nirma Ltd.

Judgement :

1. This appeal is filed by the Revenue against the order-in-appeal passed by the Commissioner of Central Excise (Appeals), Ahmedabad.
2. The respondent, M/s. Nirma Limited, is manufacturing excisable goods falling under Chapter 34 of the Schedule to Central Excise Tariff Act.

It was noticed by the Department that, consignment agents of various manufacturing units of Nirma Group of Industries were incurring advertisement expenses, such as, wall paintings, sign board, cinema slides etc. and payment of such expenses were being made by the agents.

They were transmitting bills for such advertisements for reimbursement to the respective units and the units had issued credit notes in favour of the agents for 70% of such amount and remaining 30% expenses of the bills were borne by the agents. The case of the Revenue is that, the Commissioner (Appeals) has wrongly dropped the demand of duty of 30% of the expenses incurred by the agents.

3. Shri D.N. Choudhary, learned SDR appearing for the Revenue, pleaded that advertisement and publicity of goods and maintenance of goodwill of the product in market are the functions of the manufacturer and when the consignment agent organizes sale promotion, publicity and advertisement of manufacturer's goods, at their own cost, such expenses amount to additional consideration. He relied on the decision of the Supreme Court in the case of Bombay Tyre International, reported in 1993 ELT 1896 : 1983 ECR 1627D (SC) : ECR C 663 SC, and also the decision of the Supreme Court in the case of MRF Ltd., to support his contention. He pleaded that in the present case, although the advertisements were done by the agents, but they have sent the bills to the manufacturing units of M/s. Nirma, and these units re-imbursed only 70% of the expenses and balance 30% of the expenses were borne by the agents. He stated that, this 30% of the expenses which were borne by the agents, were only on behalf of the manufacturing units and duty should have been charged on these amounts. He also relied upon the decision of the Supreme Court in the case of CCE, Pune v. Bajaj Tempo Ltd. , and pleaded that the expenses incurred on the advertisement, by the dealer which were on account of manufacture, should be added in the assessable value.

4. Shri Moot Bhai Patel, learned consultant for the respondents, pleaded that by the advertisement by the agents, besides the benefits obtained by the respondents in the form of sale of their products by such advertisements, dealers were also benefited. In support of his contention, he relied on the decision of the Supreme Court in the case of Philips India Ltd. v. CCE, Pune expenses were shared by the dealers and the manufacturer on fifty basis. The Supreme Court had observed that, it seems to us clear that the advertisement which the dealer was required to make at its own cost, benefited in equal degree the appellant and the dealer, and that for this reason, the cost of such advertisement was borne half and half by the appellant and the dealer. He also relied upon the decision of the Tribunal in their own case under Order No. 590 & 591/WZB/1988/C-I dated 23.2.1998, where, on the identical facts, their appeals were allowed and the appeals of the Department were dismissed.

5. We have considered the submissions made by both sides. We find that in this case, the dealers have advertised the goods of various units of M/s. Nirma, and

they sent the bills for re-imburement to M/s. Nirma.

M/s. Nirma re-imbursed them 70% of their expenses and balance 30% of the expenses were borne by the dealers. We find that the Commissioner (Appeals) in his order has observed that the present case is fully covered by the ratio of the decision of the Supreme Court in the case of Philips India Ltd. v. CCE, supra, and he accordingly held that the deductions towards advertisement expenses shared by the dealers are to be deducted from assessable value. We find that the present case is fully covered by the decision of the Supreme Court in the case of Philips India Ltd. v. CCE, supra. We also find that the ratio of the decision of the Supreme Court in the case of CCE, Pune v. Bajaj Tempo Ltd., supra, relied on by the learned SDR, is not applicable in the present case as in that case the advertisement was done by the manufacturer and then they sent the bills to the dealers for reimbursement. Re-imburement of advertisement expenses by manufacturer from dealer, after initially incurring the same, is a different situation than the situation in the present case. The present case and the case of Philips India Ltd. v. CCE, supra, are not on the same footing on the facts. Therefore, the ratio of the law in the case of Philips India Ltd. v. CCE, 6. We, therefore, find no merit in the appeal of the Revenue and the same is rejected.

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