**Commissioner of C. Ex. Vs. Spectrum Pharma Pvt. Ltd.**

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**SooperKanoon Citation** : sooperkanoon.com/39817

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jul-26-2005

**Reported in** : (2005)(188)ELT484Tri(Mum.)bai

**Judge** : S T S.S., T Anjaneyulu

**Appellant** : Commissioner of C. Ex.

**Respondent** : Spectrum Pharma Pvt. Ltd.

**Judgement** :

1. The Revenue is in appeal aggrieved by an Order dated 11-10-2000 made by the Commissioner of Central Excise (Appeals), Mumbai.

2. The Deputy Commissioner of Central Excise, Mumbai-IV, has disallowed the discount claimed by the assessee in their sales price for sale to M/s. Raptokos Brett & Co. Ltd. and consequently confirmed the demand of Rs. 6,26,749/- covered by five Show Cause Notices.

3. The Show Cause Notice alleged that the assessee has cleared Neopeptine Capsules and Siderfol Capsules and Hepatoglobine Capsules to their own licensor, M/s. Raptokos Brette & Co., on principal to principal basis and allowed the discount to them. The above products are manufactured by M/s. Raptokos Brette & Co. and therefore, discount allowed by the assessee does not appear to be admissible as the transaction is not at arms length. Since M/s. Raptokos Brette & Co. is a marketing agent, discount allowed to M/s. Raptokos Brette & Co. is not

permissible under the provisions of Section 4 of the Central Excise Salt Act, 1944. Since the product siderfol capsules entirely sold to the brand name owner, the gravity of the discount was not in order and that the price of which brand name holder sells. The assessee has not produced any documentary evidence showing the price and charges in the course of wholesale trade and that these are not influenced by the extra commercial consideration, therefore, the discount is not admissible.

4. The product, Neopeptine Capsules, bears a logo of M/s. Raptokos Brette & Co. and technical know-how is also given by M/s. Raptokos Brette & Co. and the entire goods are for M/s. Raptokos Brette & Co., who marketed the same.

5. The Deputy Commissioner in his Order-in-Original observed that all the facts referred above are not denied by the assessee at any stage.

It is, therefore, clear that the sale of goods by the assessee under the circumstances are not ordinarily sold by the assessee in the course of wholesale, therefore, the discount claimed by the assessee in their sale price is not correct.

6. On filing appeal by M/s. Spectrum Pharmaceuticals Pvt. Ltd., the Commissioner of Central Excise (Appeals), Mumbai, allowed the following deductions to the appellants :- 7. Further, he observed in respect of discount on account of date of expiry of the medicines and interest on finished goods, the same is not available to the appellants in view of the decisions of the Supreme Court in the case of MRF and of the Tribunals. Thus, he modified the order of the Adjudicating Authority and disposed of the appeal accordingly. Hence Revenue is in appeal.

8. The main ground urged by the Revenue is that Central Excise duty is chargeable to manufactured goods and is payable at the time and place of removal. Breakage, if any, after clearance of the goods, is not allowable for deduction for determining value at factory gate and hence deduction on that account viz. breakage is not allowable.CCE, Meerut v. Surya Roshni Ltd. reported in [2000 (122) E.L.T. 3 (S.C.)] ruled that payment made by the assessee to its customers for breakages and losses after clearance are not allowable clearance. In view of the law laid down by the Supreme Court, the impugned order is liable to

be set aside.

Accordingly, the impugned order is set aside and the appeal is allowed.