Commissioner of Central Excise Vs. Milton Polyplast

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-11-2005

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Milton Polyplast

Judgement :
1. Revenue is in appeal against the decision of Commissioner (Appeal) having accepted the Respondent as-sessees claim on valuation of the excisable goods viz "Water Jug packed along with a water bottle given free" under a 'special set scheme' whereby on purchase of this combo pack there would be no separate charge for the water bottle. The said bottle was claimed to be given 'free'. Duty was to be paid on the declared value of jug. The CCE(A) set aside the lower authorities order of demand of duty and penally as arrived, on such Kool Lancer (water bottles) of 700 ml & 1000 ml capacity cleared along with Kool 'Twister' water jug (10 ltrs & 12 ltrs capacity) respectively without including the assessable value of the bottles.

2.(a) The clearance of Kool Lancer (water bottles) along with jug, would be eligible to be covered, as quantity discount or not, under the provisions of Section 4(4)(d)(11) of the Central Excise Act, 1944 is the question involved in this appeal.

(b) The reliance of the Commissioner (Appeals) on the decision of M/s.

Kothari Detergents (P) Ltd. - is not acceptable to Revenue. They have decided to go to Supreme Court, in appeal, is the ground taken in this appeal. No stay or decision contrary by the Apex Court has been shown to us. We find no reason to differ with the Tribunal decision.

(c) The CCE(A) reliance on finding an assessement of bonus articles cleared without the payment of duty, as held In Re : Kalapi Stores, Bombay, 1981 (8) E.L.T. 807 & 1981 (8) E.L.T. 856, In Re : Barlington Exports & Bombay High Court decision in Queens Chemists - 1979 (4) E.L.T. 454 & holding that the bonus articles are not given away free but that price is distributed over the price of other goods being charged as a sale gimmick, has not been questioned in this appeal.

(d) The transaction of the 'Water jug with bottle' is not found to be objectionable or not on commercial considerations. A manufacturer would be eligible to reduce the sale price and thus assessable value for an item which does not sell. There would be no difficulty in accepting such a reduced assessable value for the water jug. The manufacturer has another option of not reducing the sale price of water jug but add another product of his own or bought out and pay duty on such combo promotion packs on the unreduced assessable values and when market is again established, remove the free gift offer' and get retained the same sale price, as hereto before. Such marketing gimmicks would not call for denial of assessments, as arrived, especially when the water bottles & water jugs are not being alleged to be at different rates of duties. We find no reason to interfere with the order of the Id. CCE(A) on the grounds as taken by Revenue in this appeal.