

Procter and Gamble India Ltd. Vs. Cce

Procter and Gamble India Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/42431

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-17-2006

Reported in : (2006)(109)ECC646

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

Appellant : Procter and Gamble India Ltd.

Respondent : Cce

Judgement :

1. The dispute is about valuation of Ariel brand detergent powder manufactured by the appellant. The issue is before us on remand by the Hon'ble Supreme Court under judgment in the case of Proctor & Gamble Hygiene & Health Care Ltd. v. CCE Bhopal 2. The appellant manufactures the aforesaid detergent in its factory near Mandideep near Bhopal, clears it in 25 Kg. (bulk) packing to M/s Industrial Enterprises (Detergent), Kanpur. At Kanpur, the detergent in bulk is repacked into smaller packs (20 gms. and 30 gms sachets). After repacking the detergents are sent to the appellant's depot for resale.

3. The appellant had been claiming the valuation of 25 Kgs. packing based on cost of production. This claim was being accepted also by the Central Excise authorities. However, under show-cause notice dated 8.6.94, it was alleged that valuation was required to be correctly made based on the appellant's sale price for retail packs. The notice was issued by invoking the extended period as available under proviso to Section 11A of the Central Excise Act and the notice was for the

period December 1992 to December 1993. In adjudication, the Commissioner held that there was short levy of duty since the value was required to be correctly fixed by taking into account the sale price of the retail packs. Rule 6(b)(ii) of Central Excise Valuation Rules was relied on for the valuation. This valuation and the differential duty demand consequently made are being challenged in the present appeal.

4. The appellant is challenging the order both on merits as well as on limitation. The submission on merits is that the goods are required to be assessed in the condition in which they are cleared from the factory of manufacture and the Revenue is in error in basing the valuation on the price of retail packs. It is also being contended that goods in bulk packs and goods in retail packing cannot be treated as similar or comparable goods. The submission of the Id. Counsel for the appellant is that this legal position remains settled by the decision of this Tribunal in the case of Savita Chemicals Ltd. v. CCE and this order remains confirmed in appeal by the Hon'ble Supreme Court vide order No. . The appellant also relies on the judgment of the Hon'ble Supreme Court in the case of Sidhartha Tubes Ltd. in support of the contention that the goods are to be assessed and cleared based on their condition at the time of their removal from the factory of manufacture and post clearance processes cannot be taken into account.

5. The contention of the Id. SDR is that, under the impugned order, also the detergent is being assessed based on the wholesale sale price of the appellant and not based on the retail price of the packets. He also points out that the Commissioner has allowed deduction towards freight while making short levy demand.

6. We find merit in the appellant's submission. The goods under removal from the factory are detergent in 25 Kg. packs. It is well settled that goods are to be assessed to duty based on their price at the time and place of removal. Therefore, the subsequent price of the detergent, after repacking, is not of relevance for the purpose of assessing the 25 Kgs. bulk packs. This is also contrary to the well-understood commercial fact that price of goods appreciated from stage to stage of trade. That goods in bulk packet and retail packet cannot be treated as the same

or comparable goods, remains settled by the decision of this Tribunal in the case of Savita Chemicals and that decision has attained finality.

7. With regard to limitation, it is being pointed out by the appellant that from 1990 onwards, the appellant had been having the same practice with regard to the detergent in question and all through the assessment was being claimed and approved based on the cost of production of the 25 Kg. packs. It is being pointed out that for the period prior to December 1992 and period subsequent to December 1993, there is no dispute raised about the principle of valuation. It is the submission of the Id. Counsel that when the same facts were disclosed over a period of time, it is not open to the Revenue to contend that for a particular period alone, there was suppression of facts with intent to evade duty.

8. The submission of the appellant with regard to limitation also merits acceptance. In the price list, it had specifically claimed valuation based on cost of production. The price list subsequent to December 1992 was continuation of the price list filed for the earlier period. When the appellant claimed assessment based on cost of production, it was open to the Revenue to make whatever enquiries deemed necessary for the purpose of determining whether the claim was legal or not. Since the valuation on the same basis remains undisputed for the earlier and subsequent periods, the dispute for the limited period of one year can be treated only as the result of a different view being taken by a particular officer and not the result of suppression of facts with intent to evade duty by the assessee.

9. In view of what is stated above, the appeal succeeds and is allowed with consequential relief, if any, to the appellant.

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