Commissioner of Central Excise Vs. Zim Laboratories Limited

Commissioner of Central Excise Vs. Zim Laboratories Limited

SooperKanoon Citation : sooperkanoon.com/43704

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-19-2006

Reported in : (2006)(113)ECC420

Judge : A Wadhwa, V T M.

Appellant : Commissioner of Central Excise

Respondent : Zim Laboratories Limited

Judgement :

1. This is a department's appeal filed against the order of Commissioner (Appeals), Central Excise, Bhopal vide his order No.YPP/535/M.III&NGP/2001 dated 17/04/2001 by which the Commissioner (Appeals) has set aside the order-in-original dated 18/11/1996 passed by the Assistant Commissioner of Central Excise, Nagpur Division II of Nagpur Commissionerate.

2. The assessee is manufacturing and clearing pharmaceutical drugs to the depots and from there they sell them to various buyers. In addition, they are also clearing a portion of the pharmaceutical drugs manufactured by them for distribution to Doctors as free samples. The valuation of the free samples is the matter of dispute. The Assistant Commissioner has adopted the value of comparable goods for levying duty on the free samples. While adopting value of comparable goods disallowed the deduction claimed on account of cash discount, quantity discount, which are subject to conditions being fulfilled at the time of sale from depot and hence not uniformly available in respect of all sales. Similarly as regards the

freight and insurance he has given a finding that no expenditure on freight and insurance is incurred on such fee samples and therefore adopted the sale price of comparable goods from the depot without allowing the above deductions. The Commissioner (Appeals), however, held that abatement on account of quantity discount and cash discount, freight and insurance should be excluded for free samples also.

4. It is an admitted fact that the physician samples are cleared for free distribution and there is no sale involved and therefore mere is no transaction value available for the product. As per the law prevalent during the relevant time, the assessment has to be done on the basis of normal price applicable to comparable goods. (This view has been upheld in CESTAT's Order No. M/1374/WZB/06-LB(EB) dated 29/08/2006 in the case of Blue Cross Laboratories Ltd. v. CCE, Goa).

The cash discount is not available in all cases of sales from depots.

Similarly the quantity discount also varies in respect of sales from the depot depending upon the quantity of goods lifted by the buyers.

These conditional discounts cannot be notionally extended to goods which are not sold but cleared free of charge for distribution as physician samples.

5. There is a clear finding by the Assistant Commissioner that there is no insurance involved in respect of the physician samples. The question of allowing deduction of freight amount from factory to depot in respect of goods sold from depot, to goods cleared free of cost from the factory also does not arise. The order of the Commissioner (Appeals) setting aside the order of the Assistant Commissioner appears not legal. Accordingly the order of the Commissioner (Appeals) is liable to be set aside.(sic)