

Glaxo (i) Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-17-1995

Reported in : (1995)LC242Tri(Delhi)

Appellant : Glaxo (i) Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The point to be considered in this case is whether supply of plastic shaker and spoon alongwith packets of Mango Complian and Glucon-D by the appellants to the consumers amounts to a trade discount qualifying for deduction in determining the assessable value of the goods manufactured and cleared by the appellants.

2. The appellants are engaged in the manufacture of food products i.e.

Mango Complian and Glucon-D. They filed a price list claiming deduction of the cost of one shaker (mug) worth Rs. 4.20 and cost of one spoon of Rs. 0.75 as free gift to their customers. According to the Department the abatement of price on account of cost of shaker (mug) and spoon was not admissible under Section 4 of the Central Excises & Salt Act, 1944.

Show cause notice was issued raising the demand of Rs. 14,288.10 and same was confirmed by the Assistant Collector disallowing the deduction of cost of shaker and cost of spoon supplied by the appellants as free gift. The appellants have become unsuccessful before the Collector (Appeals). Hence this appeal.

3. It was submitted on behalf of the appellants that gifts were offered to the customers in the nature of discount and as such quantity discount would be permissible deduction in determining the value under Section 4 of the Act. Shri Dushyant Dave, learned Counsel submitted that there is no material difference in between old Section 4 and new Section 4 as it was observed by the Supreme Court in the case of Bombay Tyre International [1983 (14) E.L.T. 1896] and it was held in the clarificatory judgment (Bombay Tyre International) reported in 1984 (17) E.L.T. 329 that trade discount in whatever name is described should be allowed to be deducted from price in determining the value.

He said that trade discount is neither restricted nor specified in Section 4 of the Act, but it should be passed on to the buyers and same should be known to them before clearance and these two conditions are fulfilled in this case. He contended that excise duty is on manufacturing cost as it was held in the case of A.K. Roy and Anr. v. Voltas Limited 1977 E.L.T. J 177 and trade discount need not be in case, but it can be in the shape of goods and quantity discount in the form of goods is an admissible deduction, and supply of free item is in the nature of quantity discount referring to the decision in the case of Queens Chemist Manufacturing Department v. Collector of Central Excise [1979 (4) E.L.T. J 454] and in the case of M/s. Burlington's Exports [1981 (8) E.L.T. 856]. He also referred to the decisions in the case of Collector of Central Excise v. Weikfield Products Company (India) Limited [1993 (63) E.L.T. 756] and Goodlass Narolac Paints Limited v. Union of India, [1993 (65) E.L.T. 186 (Bom.)] in support of his contention that trade discount/quantity discount is to be deducted out of the assessable value. He said that even if the free supply of items were held to be as part of the sales promotion, still the discount in respect of the same is permissible as the bonus articles are akin to discount in kind and the appellants had borne the cost of such free articles. He referred to the decision in the case of Bombay Latex & Distributions Put. Ltd. v. Collector of Central Excise, Bombay, reported in 1985 (19) FTT 4. Shri Satish Shah, learned JDR appearing for the Department submitted that supply of free gifts to the customers cannot be considered as quantity discount qualifying for deduction under Section 4(i)(ii) of the Central Excises & Salt Act. The free supply of gift articles as per the schemes adopted by the appellants is an incentive to customers which is in the nature of sales promotion and expenses incurred on

promotion of sale and advertisement are not deductible from the assessable value as it was held in the case of *Bombay Tyre International Ltd.* He said that case law referred to by the appellants was with reference to quantity discount and same is not applicable to the facts of this case, he said that in the case of *Modi Rayon and Silk Mills v. Collector of Central Excise, Merrut* [1987 (29) E.L.T. 933] it was clearly held that selling expenses is different from that of discounts and even in the case of *Queens Chemist Manufacturing Department* (supra) referred to by the appellants, it was clearly held that value of gifts cannot be regarded as trade discount. He said that even if the items were not manufactured but supplied, cost of such bought out items has to be included in the assessable value of the goods, referring to the decision in the case of *Uptron India Limited v. Collector of Central Excise, Allahabad*, 5. In reply it was submitted that gifts were annual in the case of *Queens Chemist Manufacturing Department* (supra) and the decision referred to by the learned DR in the case of *Uptron India Ltd.* is not applicable as it was held in different context.

6. We have carefully considered the submissions made by both sides and perused the record including citations. The trade discount is deductible item under Section 4(4)d(ii) in determining the assessable value. The term 'trade discount' is not defined in the Central Excises & Salt Act, 1944. According to the Webster's third New International Dictionary expression trade discount means 'a percentage deduction from the list price of goods allowed by a manufacturer or wholesaler to customers engaged in trade'. Similarly the term 'trade discount' has been defined in *Corpus Juris Seconder Volume 26A*, page 974 as the term 'trade discount' means difference between the seller's list price and the price at which he actually sells the goods to the purchaser; a percentage deduction from the regular list or catalogue price of goods'. Accordingly the concession which is given to purchaser would have the character of trade discount if the concession operates as deduction from the price payable by the purchaser. The trade discount may be in cash or in kind as it was not restricted under Section 4 of the Act as it was rightly urged on behalf of the appellants. Quantity discount is a form of trade discount which is permissible if it is allowed in the form of goods. Quantity discount refers to wherein the purchaser gets in excess of quantity for a contracted price in respect of particular quantity. It means he gets the concession in the price of the goods

when he gets an extra quantity. For instance the purchaser may get 11 pieces for the price of 10 pieces and accordingly one piece is an extra item which can be considered as a quantity discount. Giving gifts other than manufactured articles as an incentive to the sale promotion cannot be considered as trade discount as it was rightly pointed out by the learned JDR. A trade discount can be allowed either in the form of cash or in kind. Trade discount can be given with whatever name described either as gift or bonus in excess of the quantity and given to the buyer of excisable goods can be treated as trade discount provided they are not given at the discretion of manufacturer, but the buyer of goods becomes entitled to them on fulfilling of any condition at the time of removal of the goods. Bombay High Court in the case of Queens Chemist Manufacturing Department (supra) held that value of the gifts cannot be treated as trade discount when buyer does not have right to have a particular gift.

Therefore, where buyer has right to a particular gift it can be treated as trade discount. It was held in the case of Burlington's Export (supra) that if the customer gets 6 pieces of an article for the price of 5 pieces the price paid for 5 pieces will be assessable value for 6 pieces and there is no justification for adding the price of the free piece in arriving at the value of the said goods because such free sale is in the nature of quantity discount which is admissible under Section 4(2). It was observed in the case of Kalpi Stores, Bombay reported in 1981 (8) E.L.T. 807, that the manufacturer had the practice of showing in the invoice the supply of 13th piece as gift on the sale of 12 pieces and subsequently changed the pattern by showing the sale price for 12 pieces as the price of 13 pieces, there is nothing objectionable in both the cases, the price of free sale made by the manufacturer is not to be taken into consideration. In the case of Bombay Latex & Dispersions Pvt. Ltd. v. Collector of Central Excise, reported in 1985 (19) E.L.T. 527 it was held an article given as bonus over a quantity is not separately liable to duty. In this case it is not so. It was rightly observed by the Assistant Collector in his order that in the instant case plastic mug is not all supplied to the buyer who purchases the goods in course of wholesale trade. The assessee has claimed deduction of the trade discount for wholesale buyer separately on the price list. Plastic mug is to be supplied to the consumer by the wholesale buyer. Even if it is assumed for the sake of argument that the plastic mug is a discount for the wholesale buyer, the

same is not given to the wholesale buyer free of condition as the same has to be passed on to the customer. In our view since the gift or bonus is not the excess quantity of the goods supplied to the consumer it cannot be considered as trade discount. Further the Assistant Collector is right in observing that the intention behind giving a free gift to the unknown and unrelated retail buyer and linking of the same with the sale cannot be anything but promotion of the sale. He observed that bought out item namely plastic mug supplied with the Complan bears the name of the product as 'Complan Mango Shake' and since the free gift carries above advertisement of the excisable goods on it and therefore the said gift is also meant for publicity of the same in addition to promotion of the sale. Expenses incurred on promotion of sale and advertisement are not deductible from the assessable value, as already settled by the Hon'ble Supreme Court in the case of Union of India v. Bombay Tyre International Ltd. Accordingly we hold that supply of plastic mug shaker and spoon along with packets of Mango Complan and Glucon-D is only a gift and not trade discount and as such cost of the gift articles cannot be deducted in determining the assessable value of the goods manufactured and cleared by the appellants.

In the result, we uphold the impugned order and accordingly the appeal is dismissed.

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