

Collector of Central Excise Vs. Shubhla Pharmacy

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-28-1995

Reported in : (1996)(83)ELT454TriDel

Appellant : Collector of Central Excise

Respondent : Shubhla Pharmacy

Judgement :

1. This Revenue Appeal is directed against the Order-in-Appeal No.261/83, dated 29-9-1983 of Collector of Central Excise (Appeals).
2. The issue relates to assessable value under Notification No. 161/66, dated 8-10-1966 which permits a discount of 25% from the retail price of medicines.
3. Arguing for the Revenue, the Ld. D.R. submitted that the Respondents, during the period Nov., 1976 to April, 1978 declared the price of their goods as Rs. 3 per strip of 36 Tablets. The assessable value of Rs. 2.06 per strip for retail sale was determined by the Deptt. in terms of Notification No. 161 / 66, dated 8-10-1966, after allowing 25% discount on the retail price specified in the retail price list referred to in the Drugs (Prices Control) Order, 1979, issued under Essential Commodities Act, 1955. The Respondents supplied major part of their product in the wholesale to related firm and no discount was allowed in about 70% of the sales by wholesale.

4. None was present for the respondents when the matter was called. The Respondents, however, through Cross-objection have prayed for upholding the Order of the Collector (Appeals), stating that interpretation placed by Revenue on Notification No. 161/66 is not sustainable.

Notification provides that Patents and Proprietary medicines are exempt from so much of the duty of excise leviable on them as is in excess of the duty calculated on the basis of: (1) The value arrived at after allowing a discount of 10% on the prices specified in the price list referred to in Paragraph 19 of the Drugs (Prices Control) Order, 1979, showing the prices at which medicines are sold to retailer (hereinafter referred to as a wholesale price) or (2) the value arrived at after allowing a discount of 25% on the price specified in the price list showing the retail prices referred to in the said order.

5. This is subject to the condition that the Price List represents the prices on which the medicines are ordinarily sold to retailers or the consumers, as the case may be.

6. They had wholesale and retail prices in respect of goods manufactured by them in terms of Para 19 Drugs (Prices Control) Act, 1979, in which the Maximum Retail Price of Rs. 3.00 per Strip plus Local Taxes were indicated. The copy of this wholesale and retail price list was submitted to the Ministry of Petroleum and Chemicals. The Retail Price of Rs. 3.00 per strip was prominently printed on each strip of the impugned goods and the fact that the goods in question were sold in retail at prices which never exceeded Rs. 3.00 per strip was amply demonstrated by them through affidavits filed with the Appeal Petition decided by the Collector (Appeals) in their favour. So long as there is no dispute that the goods in question were sold at retail price declared and specified in the Price Lists, the benefit of exemption provided under Notification No. 161/66 could not be denied.

7. Respondents have also objected to the officer authorising [filing] of the appeal, while the same officer as Collector(Appeals) allowed their appeal.

8. We have heard Ld. D.R. and perused the records of the case.

Notification No. 161/66, dated 8-10-1966 exempts medicines from so much of duty of excise as is in the excess of duty calculated on the basis of among others the value arrived at after allowing a discount of 25% on the prices specified in the Price List showing the retail prices referred to in Drugs (Prices Control) Order, 1979. There is no dispute about the retail price. It is not alleged that prices were not specified. Nor is there allegation that goods were not sold at the prices declared. In view of this, we do not find any infirmity in the Order of Collector (Appeals). We, therefore, dismiss the Revenue Appeal and uphold the impugned order. Cross objections are disposed [of] accordingly.

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