

Commissioner of Central Excise, Chennai Vs. M/S. Computer Graphics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Nov-25-2009

Judge : The Honourable Ms. Jyoti Balasundaram, Vice President & the Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal No. E/1485 of 2004

Appellant : Commissioner of Central Excise, Chennai

Respondent : M/S. Computer Graphics Ltd.

Advocate for Pet/Ap. : Ms. Indira Sisupal, JDR, for the Appellant. Shri S. Murugappan, Advocate for the Respondents.

Judgement :

Per Dr. Chittaranjan Satapathy

This is an appeal filed by the Department based on the Review Order No. 167-R/2004 dated 21.9.2004 passed by the Board. The issue involved in this case relates to the question of adding the reimbursed amount received from the brand owners [M/s. Konica] towards advertisement expenses incurred by the respondents to the assessable value of film rolls manufactured and sold by the respondents. The adjudicating Commissioner has passed a detailed speaking order in this regard. She has given the following reasons for not including such amounts in the assessable value:-

“The SCN cites Rule 5 of the Valuation Rules 1975 and Rule 6 of the Valuation Rules, 2000 to uphold the liability for addition of the advertisement expenses, incurred by CGL, in the assessable value/transaction value of the finished goods sold by them. It is seen that the products manufactured by CGL are directly sold by them to various dealers. It is contended by the department that CGL are not including the advertisement expenses incurred by them and reimbursed by K.C. through NES, even though the advertisement has enriched the value of the finished products. It is extremely onerous to fit this logic into the law as it stands. As already stated, prior to 1.7.2000, the value for charging excise duty was the normal price under Section 4(1)(a) and thereafter the transaction value. Rule 5 of Valuation Rules 1975 and Rule 6 of Valuation Rules 2000 would become applicable only when the buyer is a related person or the price is not the sold consideration for sale. No evidence has been adduced in this case to establish either of these situations. Merely because advertisement expenses were incurred and later reimbursed by the brand owner to CGL, it cannot be presumed that they did not form part of the sale price. At any rate both under Rule 5 (Valuation Rules 1975) and Rule 6 (Valuation Rule 2000) only the additional consideration flowing directly or indirectly from the buyer to the assessee is to be added to the price. No evidence either direct or indirect has been adduced to prove such flow back. The assessee in their defence have also cited several case laws including the Tribunal decision in the case of Haryana Drinks Pvt. (Ltd.), which squarely applies to this case, as the facts are similar. Also, as rightly contended by the assessee, while there can be no dispute that advertising often makes an important contribution to enriching the value of a product, unless there is a flow back, its inclusion or otherwise would merit discussion only in a context where a plea is made for deduction of such expenses from the factory price for arriving at the assessable value. In the present case there is no such abatement claimed.”

2. Ms. Indira Sisupal, JDR appearing for the Department states that in addition to the price which the respondents are getting from their customers, they are getting compensated by a further amount from M/s. Konica towards the advertising expenses incurred by the respondents for the impugned goods. She states that the cost of advertising which is necessary to market the product is required to form a part of the assessable value as has been held by the Hon ble Bombay High

Court in the case of Coca Cola India Pvt. Ltd. Vs. CCE, Pune 2009 (242) ELT 168 (Bom.). She cites para 19 of the said decision in this regard, which is as follows:

“To answer the questions framed we shall have first to answer as, what constitutes manufacturing cost? The Supreme Court in Union of India Vs. Bombay Tyres International [1983 (14) ELT 1896 (SC)] has held that all elements given to enrich the value of the excisable goods and contribute to its marketability, must form part of the manufacturing cost of the goods. The relevant portion of paragraph 49 of the said judgment is reproduced herein:

“49. We shall now examine the claim. It is apparent that for purposes of determining the value, broadly speaking both the old Section 4(a) and the new Section 4(1)(a) speak of the price for sale in the course of wholesale trade of an article for delivery at the time and place of removal, namely, the factory gate. Where the price contemplated under the old Section 4 (a) or under the new Section 4(1)(a) is not ascertainable, the price is determined under the old Section 4(b) or the new (1)(b). Now, the price of an article is related to its value (using this term in a general sense), and into that value how poured several component, including those which have enriched its value and given to the article is marketability in the trade. Therefore, the expenses incurred on account of the several factors which have contributed to its value upto the date of sale, which apparently would be the date of delivery, are liable to be included. Consequently, where the sale is effected at the factory gate, expenses incurred by the assessee upto the date of delivery on account of storage charges, outward handling charges, interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely after sales service and marketing and selling organization expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organization expenses and after sales service promote the marketability of the article and enter into its value in the trade. Where the sale in the course of wholesale trade is effected by the assessee through its sales organization at a place or places outside the factory gate, the expenses incurred by the assessee upto the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the assessee will be entitled to a

deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery. [Emphasis supplied].”

She also cites the decision of the Hon’ble Supreme Court in the case of Union of India Vs. Bombay Tyres International 1983 (14) ELT 1896 (SC) and states that the expenses for marketing and selling the articles including the advertisement and publicity expenses would be one of the several components hold into the value of the goods under assessment.

3. Shri S. Murugappan, learned counsel, appearing for the respondents states that the Valuation Law and the Central Excise Valuation Rules do not provide for inclusion of any consideration received from other sources unless the same are from the buyers of the goods. In this connection he cites the decision of the Tribunal in the case of CCE, Surat Vs. Surat Beverages (P) Ltd. 2008 (232) ELT 830. He also states that the view has been upheld by the Hon’ble Supreme Court in the case of CCE, Meerut Vs. Bisleri International Pvt. Ltd. 2005 (186) ELT 257 (SC). He states that in para 13 of the decision in Bisleri International (supra) it has been held that the price supportive incentive given by the supplier of concentrates (raw material) to the assessee cannot be included in the assessable value.

4. After hearing both sides and perusal of the case records including the cited case law, we find that in this case the respondents have purchased film from M/s. Konica and after slitting and packing they have sold the impugned goods in the market. They have claimed assessment on the basis of price at which they have sold the impugned goods to the customers. No doubt they have received extra amounts from the supplier of the raw material namely M/s. Konica towards reimbursement of advertising expenses incurred by the respondents. However, we find from the rules cited in the Board’s review order that additional considerations flowing directly or indirectly from the buyer to the assessee to be added to the price. In this case, there is no evidence to show that the reimbursements made by M/s. Konica is an additional consideration flowing directly or indirectly from the buyer of the impugned goods who are independent customers not connected with

or related to M/s. Konica, the raw material supplier. M/s. Konica appear to be interested in advertising and improving sales of their branded films and hence they are reimbursing the advertising expenses incurred by the respondents. Viewed from another angle, whatever extra expenses the respondents are incurring for advertising, they are getting reimbursement of the same from M/s. Konica. As such the cost of advertising is not a burden on the assessee's manufacturer and the same does not form part of the cost of the impugned goods. In any way, in this particular case, the method of valuation is not based on the costing method but is based on the transaction value. Therefore, the price at which the respondents are selling their product to independent buyers can be taken as the assessable value as they would recover their cost and profit from such independent buyers. The additional expenses incurred by them towards advertising for which they are receiving reimbursement from M/s. Konica has no relationship with the assessable value of the impugned goods sold to the independent customers, the same is not flowing back directly or indirectly from the buyers and as pointed out by the adjudicating Commissioner, the valuation rules do not provide for including such amounts in the assessable value. Hence it is our considered view that the impugned order passed by the adjudicating Commissioner requires no interference. Consequently, the Department's appeal is rejected.

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