

Smith Kline Beecham Consumer Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-12-1996

Reported in : (1996)(88)ELT676TriDel

Appellant : Smith Kline Beecham Consumer

Respondent : C.C.E.

Judgement :

1. The appellants filed these appeals against the common impugned order whereby the appeals filed, by the appellant were dismissed.

2. The appellants filed refund claim for the refund of the Central Excise duty consequent on finalisation of the price list and RT 12 returns for cosmetics. The appellants sells his product through his depots situated at various places in the country. The assessee sells his products to the wholesale dealers at the rates quoted in the price list. The show cause notices were issued to the appellants as to why not the amount of refund is to be credited to the consumer welfare fund as per provisions of Section 11B and Section 11D of Central Excises and Salt Act, 1944. The Assistant Commissioner vide adjudication order, ordered the credit of amount of refund to the consumer welfare fund.

The appellants filed the appeals and the Commissioner (Appeals) vide impugned order rejected the appeals.

3. Ld. Counsel appearing on behalf of the appellant argued that the appellants filed the refund applications on the ground of post manufacturing expenses which had already been borne by the appellant and it was on account of adjustments being made in the post manufacturing expenses, the refund occurred and not on the basis of that expenses so collected from the buyers. He further argued that buyers paid the duty quoted in the price list and as per price list the invoices were prepared by the appellant. No part of excise duty was calculated separately hence the findings of the lower authorities are against the facts of the case. Ld. Counsel further argued that as per provisions of Section 11D(2) of Central Excises and Salt Act, 1944 the Assistant Commissioner has not made any public notice before making the credit to the consumer welfare fund.

4. Ld. JDR appearing on behalf of the department argued that the appellant has collected the excise duty from the dealers hence the burden of duty has been passed on to the dealers. The appellant is not entitled to any refund.

5. Heard both sides. The contention of the appellant, that no public notice as required under the Section 11D(2) of the Central Excises and Salt Act, 1944 was made by the respondent before the credit of the amount to the Consumer Welfare Fund, does not help the appellant. The ultimate consumer can raise this plea that no public notice was issued before the order of credit so they can file their claim. The appellant who has passed the burden of duty to the consumer cannot take this plea that public notice was not made. No prejudice has been caused to the appellant by not making any public notice before the credit of duty to the consumer welfare fund as appellant has already passed the burden to the dealers. Both the authorities below specifically held that the appellants have passed the incidence of duty to their wholesale dealers by way of supplying their product alongwith other expenses and duties inter alia includes all the posts manufacturing expenses to for which refund claim was preferred. Even before the Tribunal the appellants have failed to discharge the burden to prove that incidence of duty has not been passed on to the consumer. The Hon'ble Supreme Court in the case Union of India v. ITC reported in 1993 (67) E.L.T. 3 held that in view of amended provisions of Section 11B of Central Excises and Salt Act, where the burden of incidence of duty has been passed to the consumer, the assessee is not entitled for refund on the

ground of unjust enrichment.

6. In the present appeals, the appellants has passed the burden of incidence of duty to the dealers and they have failed to discharge the burden cast upon them to prove that incidence of duty has not been passed on to any other person. In these circumstances, there is no merit in these appeals. The appeals are dismissed.

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