(2015) 09 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal No. 4439 of 2006.

Lakhanpal Ltd. - Appellant @HASH Commissioner of C. Ex. and Cus, Vadodara

Date of Decision : 03-09-2015

Acts Referred:

Citation : (2015) 323 ELT 645 : (2015) 15 SCC 553

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri. Alok Yadav, Somnath Shukla, Udit Jain and Praveen Kumar, Advocates, for the Appellant; S/Shri. K. Radhakrishnan, Sr. Advocate, Sanjai Kumar Pathak, Ms. Rashmi Malhotra, Aviral Kashyap and B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1`. First, facts in brief. The appellant is the assessee which is manufacturing torches, apart from other goods. These torches are manufactured and marketed under the brand name ?NOVINO?. Indubitably, this brand name ?NOVINO? belongs to one M/s. Lakhanpal National Ltd. (hereinafter referred to as ?LNL?) The said LNL has entered into an agreement with the assessee under which LNL has allowed the assessee to use the aforesaid brand name. For this purpose the assessee is also paying royalty @ 2.5% in respect of sales of the aforesaid products to buyers, other than LNL. In fact, approximately 50% of the sales of the product ?NOVINO? manufactured by the assessee are sold to other buyers and approximately 50% are sold to LNL.

2. The assessee received the show cause notice dated 2-10-1999 from the Commissioner of Central Excise in which it was mentioned that the assessee was paying royalty @ 2.5% for use of the brand name to LNL and the assessee was asked to show cause as to why the amount of royalty be not added to the price which was charged by the assessee in the sale of the aforesaid product, to arrive at transaction value. The show cause notice indicates that while proposing such a step, the Commissioner had relied upon Rule 5 of the Central Excise (Valuation)

Rules, 1975.

3. The assessee questioned the veracity of this show cause notice taking number of pleas/contentions. However, none of these contentions found favour with the assessee. The Commissioner, who passed the Order-in-Original dated 2-8-2000, confirmed the demand made in the show cause notice. The appeal of the appellant preferred against that order before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ?CESTAT?) met the same fate as the Tribunal has also relied upon the order of the Commissioner thereby dismissing the appeal. The order of the Tribunal [2006 (206) E.L.T. 656 (Tribunal)] is under challenge before us in these proceedings.

4. Submission is made by the learned counsel for the appellant that Rule 5 will have no application on the facts of the present case. It is submitted that a bare reading of Rule 5 would demonstrate that the additional consideration which flows directly or indirectly from buyer to the assessee can be added to the price which is charged by the seller from the buyer. On the contrary, in the present case, the royalty, which is treated as additional consideration is paid by the seller to the buyer. We find force in this contention of the learned counsel for the appellant which is clear from the bare reading of Rule 5. Rule 5 is re-produced herein below :

"Rule 5. Where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except that the price is not the sole consideration, the value of such goods shall be based on the aggregate of such price and the amount of the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee."

5. The very basis of the show cause notice, in fact, was untenable and when the assessee is paying the royalty to LNL (buyer) and that too for using the brand name ?NOVINO? which belongs to the buyer, the question of treating the same as "additional consideration" within the meaning of Rule 5 and adding to the price charged from the LNL for sale of the aforesaid product could not arise.

6. The impugned orders are, therefore, set aside and the appeal is allowed.