CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.E/74/2008

[Arising out of Order-in-Original No.29/2007 (C) dated 22.11.2007 passed by the Commissioner of Central Excise, Pondicherry]

Honda Siel Power Products Ltd. — Appellant

Versus

Commissioner of Central Excise, Pondicherry — Respondent

Appeal No.E/206/2008

[Arising out of Order-in-Appeal No.80/2007 (M-I) dated 27.12.2007 passed by the Commissioner of Central Excise (Appeals), Chennai]

Royal Enfield — Appellant

Versus

Commissioner of Central Excise, Chennai-I — Respondent

Appearance:

Shri Raghavan Ramabhadran, Advocate
For the Appellant

Shri S. Nagalingam, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision : 07.02.2017

FINAL ORDER No. 40201-40202/2017

Per D.N. Panda

Appellant's grievance in appeal No.**E/74/2008** is that when 30% of the advertisement cost was borne by the buyer-dealers that has been sought to be included in the assessable value for levy of duty thereon. Law does not permit such inclusion when price was the sole consideration of sale. The advertisement expenses were not incurred by buyer-dealers at the instance of the appellant. Revenue presumed to the extent of cost of advertisement, appellant depressed the value of the goods sold. Therefore, inclusion of above advertisement cost was unwarranted.

2. So far as Appeal No.**E/206/2008** is concerned, the actual amount of advertisement expenses incurred to the extent not reimbursed by the appellant was sought by Revenue to be included in the assessable value. Such inclusion is also governed by the same proposition as stated above.

3. Against the above proposition, Revenue submits that advertisement expenses were incurred by buyer-dealers on behalf of the appellant which was the arrangement between the parties to depress the assessable value of the goods cleared to the respective buyer-dealers and undue advantage was gained by the appellant.

4. Relying on the agreement entered into by the appellant M/s. Honda Siel Power Products, ld. Advocate submitted that buyer-dealers shall take appropriate measure for publicity for their sales promotion. There was no undue gain made by appellant directly or indirectly from the above advertisement expenses nor there was any depression to the assessable value.

5. Heard both sides and perused the record.

6. The proposition of the law as pleaded by appellant is that there should be direct or indirect flow of undue gain to the appellant resulting in depression of the value of goods cleared is appreciable. There is no instance brought out by Revenue that non-reimbursement

Customs, Excise & Service Tax Appellate Tribunal part of the advertisement cost incurred by the buyer-dealers has resulted in any undue gain to the appellants making depression to the assessable value. In absence of any direct nexus and without proving that price was not the sole consideration of the sale, there cannot be any adjudication under surmise. Accordingly, both the impugned orders fail to sustain for which both the appeals are allowed.

(Dictated and pronounced in open court)

14/02/2017

(Madhu Mohan Damodhar)
Technical Member

10/2/2017

(D.N. Panda)
Judicial Member

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