

**Cce Vs. N.P. Functionary Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/10750](http://sooperkanoon.com/10750)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT

**Decided On :** Feb-04-1997

**Reported in :** (1997)(70)LC576Tri(Bang.)alore

**Judge :** V Gulati, Vice-, T Nambiar

**Appellant :** Cce

**Respondent :** N.P. Functionary Ltd.

**Judgement :**

1. The issue in the appeal relates to demand of duty made for the reason that the actual discount shown in the sales invoice was less than the discount which was claimed by the appellants at the time of clearance of the goods from the factory to the Depot. Before the lower authority the appellants also explained that they have got a uniform price for the goods sold from their Depot in different parts of the country and the freight element for the removal of the goods to the different depot was different and so also the turn over tax and instead of claiming the abatement of these elements they sought the abatement to cover all these including the discount which was ultimately given to the buyers from the depot. Admittedly the term discount used at the time of removal of the goods was misleading and the appellants also did not come on record at the time of removal of the goods that this discount covered all these elements. The lower authority took note of these pleas and subsequently verified the position with reference to some of the gate passes and has come to the conclusion that abatement as claimed by the respondents included the discount element so collected and that there was extra

realisation as such by the appellants from the customers. The Revenue is in appeal against this finding of the lower authority on the ground that since the actual discount as shown in the sales invoice from the depot was less than what was claimed the appellants will not be entitled to abatement for the differential amount.

2. Shri Arulsamy, the learned DR for the department pleaded that the respondents could have claimed refund in respect of the amount which was due to them.

3. The respondents are absent. We observe that the assessable value in terms of Section 4 has to be arrived at after taking into consideration the abatements as are permissible. If the assessee is able to show that abatement taken by them notwithstanding the fact that the same had not been described correctly was as per the provisions of the law and the aggregate abatement taken is the sum total of the abatements as are available under law, no demand could be made just because abatement had been taken by describing it by a particular nomenclature. The lower authority has taken precisely the same view and he has satisfied himself that the total abatement taken under the heading discount comprised of abatement available in respect of freight, turn over tax, and Octroi etc. In this view of the matter, we hold that there is no merit in the appeal and we dismiss the same. The cross appeal is also dismissed as misconceived in law.

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