

Cpec Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-28-1997

Reported in : (1997)(94)ELT694TriDel

Appellant : Cpec Limited

Respondent : Collector of Central Excise

Advocate for Pet/Ap. : Shri. Gopal Prasad

Judgement :

1. Appellant had filed price list in Part I for their supplies to their sole distributors, M/s. Voltas Limited and another price list for their supplies to their customers who were wholesale dealers. In the former price list, discount of 20% was claimed as deduction while in the latter price list the discount claimed was at the rate of 15%. During the period 5-12-1987 to 31-12-1987 appellant had cleared their goods to their wholesale dealers and paid duty after deducting the higher discount of 20%. This was objected to by the Department and after issue of show cause notice the Additional Collector of Central Excise passed the impugned order disallowing the discount claimed. The present appeal has been filed against the said order.

2. Shri Gopal Prasad, learned Counsel for the appellant stated that the discount of 20% which have been claimed for their sales to their customers who are wholesale dealers had actually been passed on them.

They subsequently filed price list covering such supplies also claiming the deduction of 20% as trade discount. Such price lists were duly approved and for removals under cover of such revised price lists there was no problem. The present dispute has arisen only because they were held to be not eligible for claiming deduction of 20% for supplies to their wholesale dealers. The dispute is not passing on their discount of 20% but of not having filed price list claiming that discount. He posed the query as to what the Department would have done if they had claimed 15% discount in the price list but actually granted a lesser discount, say, 10% and provided the answer himself that the Department would have issued a notice for the difference in duty involved between the discount claimed and discount actually allowed. On the same analogy, he pleaded that the higher discount should not have been disallowed only on the ground that such a thing had not been claimed in the price list.

3. The arguments were resisted by Shri M. Ali, learned Departmental Representative who submitted that the higher discount of 20% was claimed by them only for their supplies to their sole distributors, M/s. Voltas Limited with whom they had entered into an agreement. Such an agreement was not there in the case of other wholesale dealer.

Actually for the sales to M/s. Voltas Limited they should have filed price list in Part II as such supplies were in terms of a contract.

Since the supplies to the other dealers was not covered by any similar contract and as the price list filed for such supplies to wholesale dealers showed only a discount of 15% as claimed in the price lists for such supplies, the adjudicating authority had rightly disallowed the discount of 20% applied by them while paying the duty. He pleaded that the appeal be dismissed and order upheld.⁴ The arguments have been taken note of. We have perused the record.

During such perusal of the show cause notice and answer thereto, it came to light that what the adjudicating authority has done was to disallow the entire 20% discount and not limit the deduction only to 15% with reference to the price list filed in respect of wholesale dealer other than Voltas Limited who happened to be their sole distributors also. This was the stand taken by the learned counsel when he

contended that the entire discount had been disallowed and that they did not get the deduction of even the normal discount of 15% which had originally been claimed by them in the price list applicable for sale to the wholesale dealers. There is no finding that the sales to such wholesale dealers had been made without giving them the discount of 20% and the adverse decision has been taken only on the ground that such clearances have been made on payment of duty after filing 20% discount.

We are of the view that it would not be in order to disallow the discount that was actually granted to such buyers, only for the reason disclosed in the impugned order. But that does not absolve the appellant of the responsibility to file appropriate price list before removal of the goods paying duty at the lower prices. For the subject clearances, they had actually filed price lists which showed a discount of only 15%. Where duty is sought to be paid not with reference to approve value but on a lower value it is incumbent-on, their part to file appropriate price list and pending approval thereof to pay duty on the higher value consistent with the price list approved earlier or avail provisional assessment. Instead, they, on their own, availed of higher discount and paid duty on a value lower than the approved prices. Such an act on their part would come within the mischief of Rule 173Q(1)(a) which refers to removal of excisable goods in contravention of any of the provisions of Rules. In the circumstances, while setting aside the demand of duty ordered by the Additional Collector, we reduce the penalty to Rs. 5,000/-. The impugned order is modified to this extent. The appeal is partly allowed as above.

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