Collector of Central Excise Vs. Gujarat Bottling Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-04-1997

Reported in : (1998)(99)ELT330TriDel

Appellant : Collector of Central Excise

Respondent : Gujarat Bottling Co.

Judgement :

1. These appeals are heard and disposed of together since they involve an identical question. We have heard both sides.

2. The common respondent in these appeals, engaged in the manufacture of aerated waters, had filed several sets of price lists for different periods claiming trade discount at the rates indicated therein.

Assistant Collector passed separate orders disallowing the claim for deduction of discount. Collector (Appeals) reversed these orders and allowed deduction of discount. These orders are now challenged by the department.

3. Sales by the respondent are to wholesalers, who in turn, effect sales to retailers who include railway canteens and other canteens like Airport canteens, Cinema Theatre canteens and the like. In respect of each period respondent had filed 3 sets of price lists, one price list without any claim for deduction, another price list claiming deduction of trade discount at a particular rate and the third price list claiming deduction of trade discount at a higher rate. Apparently, the three price

lists relate to goods sold to wholesalers which in turn are sold to three categories of retailers, namely, retailer's railway canteens and other canteens. According to the practice adopted by the respondent, discount was not given to wholesalers at the time of preparing respondent's invoices. In other words, the respondent's invoices to the wholesalers cover the full price. The wholesalers after effecting sales to the three kinds of retailers as per the cash memo, prepared fortnightly or monthly statements and forwarded the same to the respondents. The periodical statements contained particulars of the trade discount given to railway canteens and other canteens. The copies of cash memos issued by the wholesalers to retailers were being forwarded to the manufacturer along with the periodical statements. The respondent after verifying these records, would quantify the discount payable in respect of each earlier invoice in favour of the wholesalers and give credit for the same in the next invoice. In other words, discount though not actually granted at the time of clearance, was being granted subsequently.

4. The Assistant Collector declined to allow deduction of discount on the ground that the exact quantum of discount was not known before removal of goods, that it was not given at the time of clearance and there was no correlation between gate passes of the respondent and the sales effected by the wholesalers. Shri M. Ali, JDR besides supporting these grounds also contended that the wholesalers were authorised to effect sales only to approved canteens and in fact wholesalers had sold the goods to non-approved canteens also.

5. The contention that since the exact quantum of discount payable was not known before removal of the goods, the discount cannot be allowed is not sustainable. The orders passed by the appellate authority make it clear that this was the particular trade practice being followed by respondent and respondent's wholesalers. The price lists themselves indicate the rate of discount available under each price list.

Therefore, the rate of discount must be taken to be known to the trade before removal.

6. It is true that at the time of clearance by the manufacturer in favour of the wholesalers, the exact amount of discount allowable was not known. That was

because discount at a particular rate was allowable in respect of goods which the wholesaler may sell to non-railway canteens and slightly higher rate of discount was allowable in respect of goods sold by the wholesalers to railway canteens. At the time of clearance in favour of wholesalers, it would not be possible to know what percentage of the goods would be sold in favour of railway canteens or non-railway canteens. Necessary trade discount actually payable in respect of each consignment could not be quantified at the stage of clearance or the preparation of the invoice. The quantification was being postponed to a stage after the goods were sold by the wholesalers to retailers. It was only then that the wholesalers would be in a position to inform the respondent as to the quantity sold to railway canteens and the quantity sold to non-railway canteens. The stage of quantifying the trade discount would arise only then. Since the rate of discount and the conditions of discount for grant of discount were not known before removal, the mere postponement of the quantification and payment of discount to the end of fortnight or month cannot be a valid ground to disallow the discount in question.

7. We are not impressed by the contention that there was no correlation between the respondent and the sales affected by wholesalers to retailers. Whatever goods supplied by respondent to wholesalers were in turn sold to the retailers.

8. We are not also in a position to accept the contention that wholesalers affected sales in favour of non-approved canteens and therefore, goods covered by either were outside the scheme of trade discount. Neither the order of the Assistant Collector nor that of the Collector (Appeals) refer to the circumstance that the discount would be available only if sales were made in favour of approved canteens.

Even assuming that there was such a condition, there is no case specifically propounded till now that there were sales to canteens other than non-approved canteens or that the respondent was claiming discount in respect of goods sold to non-approved canteens.

9. For the reasons indicated above we find no ground to interfere and accordingly dismiss the appeals.