Cce Vs. Milton Plastics

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SooperKanoon Citation : sooperkanoon.com/12261

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-02-1997

Reported in : (1998)(74)LC807Tri(Mum.)bai

Judge : G B Deva, J T J.H.

Appellant : Cce

Respondent : Milton Plastics

Judgement :

1. This is an appeal filed bythe department against the impugned order passed by the Collector of Customs & Excise (Appeals), Bombay.

2. When the matter was called none appeared on behalf of the respondents in spite of the issue of notice. We have heard Shri M. Ali, learned Senior Departmental Representative for the Revenue.

3. Accordingly to the department the respondents have filed two price lists in Proforma II effective from 10.8.1988 for their manufactured product. In both the price lists, description of excisable goods, price at wholesale trade and the class of buyers are the same. In the first price list, assessees claimed trade discount at 10% whereas in other price list it is 9%. The Assistant Collector in his order dated 12.4.1989 approved both the price lists allowing trade discount at 9% only. On an appeal filed by the assessee the Collector (Appeals) decided the issue in favour of the assessee as per order-in-appeal dated 23.1.1990.

4. It was the contention of the department when both the price lists having the same effective dates and meant for the goods of the same description and of same prices and the buyer being one there ought to be no cause for differentiate the price list and the discount are to be the same in both the price lists.

5. The Collector (Appeals) has discussed the issue in general in observing that what the appellants had allowed is a quantity discount which is a form of discount and is permissible even if it is allowed in the form of money or in the form of goods it was practical in both cases. There is deduction in the price charged from the buyer. He has not discussed when both the price lists are of the same in nature why differentiation in rate of discount arid how it was permissible. Since he had not applied the mind to the vital issue and has not given clear finding on that issue, we are of the view that the matter has to go back for reconsideration. Accordingly, we are remanding the matter to the jurisdictional Collector (Appeals) and to decide the issue afresh and to pass an appropriate order after providing an opportunity to the assessee. Thus, the appeal filed by the department is allowed by way of remand.