

Bajaj Electricals Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-17-1997

Reported in : (1998)(102)ELT416Tri(Mum.)bai

Appellant : Bajaj Electricals Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant is manufacturer of electric fans. It sells fans to wholesale dealer from twenty depots located in different parts of the country. It has no sale at the factory for sale from 16 of these depots the appellant had one price. This price was higher than the sales made from the remaining four depots which are located in Ahmedabad, Jaipur, Kanpur and Ghaziabad. The department was of the view that the assessable value for sales to wholesale dealer must be one and there cannot be more than one assessable value for goods sold to buyers belonging to same class. It, therefore, issued notice proposing enhancement of the value of the goods sold from these four depots. The Assistant Collector whose order has been confirmed by the Collector (Appeals) confirmed this proposal. Hence this appeal.

2. Advocate for the appellants, contends that it is now settled law that there can be different prices for the buyer of the same class in different areas and that discounts at different rates from the wholesale price at rates to customers in different geographical area are permissible. He relies for the first proposition upon the decisions of the Tribunal in Gora Mal Hari Ram Ltd. v. C.C.E., Delhi -1994 (69) E.L.T. 269 and in Travancore Cements Ltd. v. C.C.E. -1994 (71) E.L.T.498. He

relies for the latter proposal upon decision of Gujarat High Court in Gujarat State Fertilisers Company v. U.O.I. -1980 (61) E.L.T.397 and the Bombay High Court decision in Music India Ltd. v. U.O.I.-1986 (25) E.L.T. 1032 and the Madras High Court decision in Sharada Silicate and Chemicals Industries v. C.C.E. -1979 (4) E.L.T. (J 20). He contends that the reason for the lower prices for the sales from the four depots is due to differences in Sales Tax, Octroi, entry tax and due to "geographical factors". He emphasises that in subsequent proceedings on the same issue, the department has accepted the contention that the difference in price was permissible and was due to commercial considerations, citing the decision dated 31 March, 1995 of the Collector (Appeals) in his Order No. P/100/95.

3. Departmental representative contends that the reasons attributed for the difference in prices are such that they could apply to various other depots located in various other parts. Further he says the appellant has not show the existence of specific factors and the precise influence that these factors have upon the determination of the price, so as to sustain a conclusion that the difference in price is due to commercial considerations. He points out that the term "geographical consideration" is so vague to be meaningless. He therefore, opposes the appeal.

5. There cannot be any dispute with the proposition that the same manufacturer can have different prices and, different assessable value for sales to the customers in different areas even though the customers may be of the same class. To put it differently, commercial consideration justify an existence of more than one assessable value for a commodity for the same class of buyers. This is settled by the decisions which the advocate for the appellant has cited. But the emphasis in these decisions is that the difference in price must be one that arises on account of commercial considerations. It cannot be one based on considerations which are not commercial. We confess our inability to accept that the considerations in the present case are commercial. How the fact that the rate of local taxes such as sales tax, octroi vary in different places would itself justify difference in assessable value given the fact that these taxes cannot form part of the assessable value was not explained. Again we are unable to appreciate what is meant by "geographical considerations" which would justify reduction in prices. It is not possible to

appreciate a difference in geography between Ahmedabad & Kanpur, and Delhi & Jaipur.

However, we have to concede that these were not the considerations embedded in the notice. The notice only were on the proposition that a concept of two prices for one class of buyer is not acceptable. That concept may have held currency when the notice was issued in 1991 but no longer holds good. Therefore, going by the terms of the notice it has to be held that it is not correct to say that there cannot be more than one assessable price for the same class of buyers. On this understanding of the matter we allow the appeal and set aside the impugned order.

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