

**Collector of Central Excise Vs. Transcom**

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

**Decided On :** Dec-23-1997

**Reported in :** (1998)(99)ELT254TriDel

**Appellant :** Collector of Central Excise

**Respondent :** Transcom

**Judgement :**

1. Respondent is absent, but has sent a request for decision of the appeal on merits. We have heard Shri M. Ali, JDR and perused the papers.
2. Respondent, engaged in the manufacture of various types of voltage stabilisers and cut-out systems with the brand name of the buyer M/s.

Prompt India Ltd., was filing price lists from time to time and on approval thereof, clearing the goods on payment of appropriate duty. In respect of the period covered by Price List No. 1/88-89 and other price lists, show cause notice was issued stating that the respondent and the buyer have to be regarded as related persons and, therefore, the assessable value for the purpose of computation of duty should be based on the price charged by the buyer to wholesale dealers and proposing demand of differential duty on that basis. The respondent resisted the notice denying the alleged relationship. The Assistant Collector upheld this contention and dropped the demand and his order was confirmed by the Collector (Appeals), when challenged by the Department. The Department, being aggrieved, has filed the present appeal.

3. The memorandum of appeal does not take up any contention to the effect that the manufacturer and the buyer are related persons and, therefore, the prices charged by the buyer to wholesalers should be the basis for determining the assessable value in the hands of the respondent. The only ground urged is that besides the prices declared in the price lists, additional consideration flew from the buyer to the manufacturer and such additional consideration should be included in the assessable value. This contention is based on the allegation that the buyer was meeting the cost of after Sale services during the guarantee period, meeting marketing, selling and advertisement expenses and supplying technical know-how to the respondent free of charge. The case that additional consideration flew from the buyer to the manufacturer and that should form part of the assessable value does not appear to have been set out in the show cause notice, nor at any other stage before the Assistant Collector or the Collector (Appeals). Shri M. Ali, JDR invited our attention to page 1 of the order passed by the Collector (Appeals) where reference is made to technical know-how supplied by the buyer and marketing, selling and advertisement undertaken by them. No doubt the order passed by the Collector (Appeals) refers to these allegations but only in the context of these allegations leading to an inference of relationship. In these circumstances, the Department cannot be permitted to urge at this stage that the assessable value should be determined . taking into consideration the alleged additional consideration which flew from the buyer to the manufacturer.

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