Collector of Central Excise Vs. Taparia Tools Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-1998

Reported in : (1998)LC317Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Taparia Tools Ltd.

Judgement :

1. Respondent engaged in the manufacture of Hand Tools and goods falling under erstwhile T.I. 51A was selling 90% of the production to wholesale dealers allowing approved discount and clearing 10% of the production to a consignment agent for Gujarat State and allowing discount equal to 4% less than the approved discount. Four percent differential discount was being paid to the consignment agent. Demand was proposed for differential duty on the element of 4%. Though the respondent resisted the notice, the Assistant Collector confirmed the demand. Collector (Appeals) set aside the demand by an order which disposed of three appeals. This order is now challenged by the Department.

2. Single appeal will not be maintainable against common order passed by the Collector (Appeals) in three separate orders.

3. Even on merits, Department has not been able to make out a case. It is true that commission paid to an agent cannot be deducted from the assessable value. In the present case 90% of the production is sold outside Gujarat State to wholesale dealers at the approved discount.

Sales in Gujarat State are only through consignment agent who is paid 4% and only the balance percentage is being passed on to the dealers.

4. According to Shri K. Srivastava, SDR buyers in Gujarat State and the buyers outside Gujarat State fall into two different class and therefore there can be two different prices. This argument would merit serious consideration if all the sales are factory gate sales to buyers. The sales to dealers outside Gujarat State are factory gate sales and uniform discount is allowed to them. Therefore, it cannot be said that factory gate sales are to two different class of buyers. If factory gate sales are to two different class of buyers, there could be two wholesale prices, one each for each class of buyers. Such is not the position in the present case. Therefore, assessable value of goods covered by all the sales would be governed by only the factory gate sale price available. Therefore, demand was not justified.