

Collector of Central Excise Vs. Lml Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-30-1998

Reported in : (2003)(158)ELT837TriDel

Judge : U Bhat, S T K.

Appellant : Collector of Central Excise

Respondent : Lml Ltd.

Judgement :

1. Appeal No. E/4996/91-A has been filed by the Collector of Central Excise, Kanpur against the order passed by the Collector (Appeals) New Delhi. Appeal No. E/4434/92-A has been filed by the assessee against the order passed by the Collector (Appeals), Central Excise, New Delhi.

2. The assessee in this case is engaged in the manufacture and sale of scooters. The Department's appeal arises in relation to price list No.2/87 with effect from 3-1-87 filed under Part I and price list No. 2/87 with effect from 3-1-87 filed under Part V at the instance of the Department. These price lists related to the sales of scooter outside the State of Uttar Pradesh where sales were only to individual customers with assistance of authorised representative. The factory is situated in U.P. State. The sales in U.P. were through wholesalers who in turn effected sales to individual customers, receiving during the relevant period wholesalers' discount of Rs. 250/- per vehicle. The wholesalers in U.P. State had invested money in purchasing the vehicles and attended to after sales service. In price list No. 2/87

relating to sales outside U.P. State, assessee declared the retail price since all sales were to individual customers and declared wholesale price arrived at after deduction of Rs. 250/- per vehicle from the retail price. The Assistant Collector held that the sales outside U.P. State were not in retail and disallowed the deduction. This order was set aside by the Collector (Appeals), who relying on the decision of the Tribunal in Order Nos. 736-739/89-A in appeals filed by the Department against the present assessee held that wholesale price charged by the assessee to wholesalers in U.P. State on or after 4-10-85 should be treated as wholesale price outside U.P. State also. In other words, he allowed deduction of discount of Rs. 250/- per vehicle claimed by the assessee during that period in respect of scooters sold outside U.P. State. This order is challenged by the Department.

3. In 1984-85, the assessee filed five price lists in Part V in respect of scooters sold throughout the country declaring retail price and claiming deduction of 25% for arriving at the wholesale price.

4. The Assistant Collector passed an order treating the sales as wholesale and approving the purported "wholesale price" without allowing any reduction. Collector (Appeals) held that wholesale price is available for U.P. State with effect from 4-10-85 and that this price should govern sales outside U.P. State during the period commencing from 4-10-85, set aside the order passed by the Assistant Collector in regard to the period prior to 4-10-85 and directed him to pass a fresh order. The Department challenged the order before the Tribunal and the appeal was disposed of by Order Nos. 736-739/89-A upholding the findings of the Collector (Appeals) order and directing approval for the period prior to 4-10-85 after following Rule 6(a) of the Central Excise (Valuation) Rules, 1975. After remand, the Assistant Collector granted deduction of Rs. 250/- per scooter on the ground that authorised representatives outside the U.P. State were being paid only this amount for such service. This order having been confirmed by the Collector (Appeals), assessee has filed Appeal No. E/4434/92-A. The dispute which survives for consideration in Appeal No. E/4434/92-A relates to clearances effected by the assessee to individual customers throughout the country prior to 4-10-85.

5. We turn to Appeal No. E/4996/91-A. The wholesale dealers in U.P.State were allowed discount of Rs. 250/- per vehicle by the assessee.

Since the sales in U.P. State were to wholesale dealers, wholesale price in U.P. State was available. The Collector (Appeals) merely adopted this wholesale price as the wholesale price outside U.P. State also. The question of adoption arose since outside U.P. State assessee did not have wholesale sales and sales were only to individual customers and the retail price had to be converted into wholesale price for the purpose of Section 4 of the Central Excise Act, 1944. In the decision of the Tribunal in Final Order Nos. 736-39/89-A, the Tribunal held that since with effect from 4-10-85 wholesale price is available for U.P. State that should be the wholesale price in regard to the clearances effected outside U.P. State also. The Collector merely followed this decision of the Tribunal. The order is challenged by the Department in Appeal E/4496/91-A. We find no ground to interfere with this decision. According to the department, the extent of the deduction has to be stated and established before deduction can be allowed. We are concerned in this appeal with deduction of discount for the purpose of converting retail price into wholesale price. In this context, the question of stating particulars and approving them would not arise, particularly because we are adopting the wholesale price available in U.P. State, for the rest of the country also. Appeal E/4996/91-A is, therefore, dismissed.

6. The controversy surviving for consideration in the assessee's appeal. Appeal E/4434/92-A relates to the period prior to 4-10-85 so far as the period with effect from 4-10-85 is concerned, the Tribunal in the remand order held that since wholesale price was available in U.P.State, the same should apply to clearances to customers outside U.P.State also. The question is what should be regarded as the wholesale price outside U.P. State for the period prior to 4-10-85. The difficulty arose because during the period prior to 4-10-85 the assessee did not have wholesale transactions at all. In paragraph 3.3 of the remand order there was a reference to authorised dealers in U.P.being given commission of Rs. 325/- as against the commission of Rs. 225/- given to the authorised representatives outside U.P. State with effect from 4-10-85. The discount given to the wholesale dealers in U.P. State on 4-10-85 was Rs. 325/- per vehicle. It is reasonable to hold

that this should be the notional discount payable to wholesale in U.P. State even prior to 4-10-85 if there had been wholesale dealings in U.P. State. Deduction of Rs. 325/- has to be given to convert the retail price into wholesale price. In the facts of the case, it would be reasonable to deduct the same figure for conversion of retail price into wholesale price in respect of transactions outside U.P. State also.

7. The learned Counsel for the assessee placed reliance on the decision of the Tribunal in the case of Escorts Ltd. reported in 1988 (33) E.L.T. 147 (T). In that case, the Tribunal directed deduction of 5% to be given to convert retail price into wholesale price. Our attention is also invited to the decision of Tribunal in the case of Modi Xerox reported in 1989 (40) E.L.T. 481 (T) where the Tribunal directed retail price to be converted into wholesale price by granting deduction of 15%. This was challenged by both sides before the Supreme Court.

Department's appeal was dismissed. The assessee's appeal was allowed in part in the decision reported in 1998 (98) E.L.T. 12 (S.C.) allowing deduction of 28%, since the Tribunal in respect of another period had allowed such deduction and the appeal of the department against that decision had been dismissed by the Supreme Court. Modi Xerox case which dealt not with two wheelers but with photocopier machines cannot furnish a safeguard to enable us to arrive at the exact modality of converting retail price of two-wheelers to wholesale price. The decision in Escorts relates to two-wheelers and the Tribunal allowed deduction of 5% which in that case worked out to Rs. 550/-. We do not think that this can be followed in the present case since there is definite evidence that on 4-10-85, the assessee was giving wholesalers in U.P. State discount of only Rs. 325/-. We do not think anything more than such deduction can be granted for the purpose of converting the retail price into wholesale price.

8. For the reasons indicated above, we modify the decision of the lower authorities and direct approval to be given to wholesale price by deducting Rs. 325/- per vehicle from declared retail price. Appeal E/4434/92-A is thus allowed in part.