

**Escorts Tractors Ltd. Vs. Cce**

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

**Decided On :** Apr-06-1998

**Reported in :** (1998)(77)LC293Tri(Delhi)

**Judge :** U Bhat, S T K.

**Appellant :** Escorts Tractors Ltd.

**Respondent :** Cce

**Judgement :**

1. Shri R.P. Mishra, Manager of the appellant appeared before us and prayed for time. We have already disposed of appeal Nos.

E/3494-3513/90-A filed by the present appellant against orders very similar to the orders impugned in these cases. The appeals were disposed of after hearing the Manager (Law) of the appellant. In these circumstances, we are not inclined to grant adjournment. We have heard Shri R.S. Sangia, JDR and perused the papers.

2. The present dispute arises in relation to order-in-appeal No.12-24/92 dated 15.1.1992 passed by the Collector (Appeals), modifying only in part the several orders passed by the jurisdictional Assistant Collector on various price lists filed by the appellant in 1989-90,1990-91. The majority of the tractors manufactured by the appellant, M/s. Escorts Tractors Ltd. were being sold to M/s. Escorts Ltd. at a price lower than the price at which the appellant was selling tractors to independent

wholesalers. It is stated that the price list declared only the lower price at which tractors were being sold to M/s.

Escorts Ltd. The Department took the stand that the manufacturer and the bulk buyer being related persons within the meaning of Section 4(4) (c) of the Central Excise Act, 1944, the price to M/s. Escorts Ltd. has to be ignored and the assessable value should be based on the manufacturer's price to independent wholesalers. The appellant resisted the stand of the Department by denying the relationship and also raising certain consequential contentions in the alternative. The Assistant Collector overruled these contentions and confirmed the proposal of the Department to base the value on the manufacturer's price to independent wholesalers. In appeal, the Collector (Appeals) confirmed this proposal, but allowed admissible freight charges to be deducted from the manufacturer's price to independent wholesalers. Not being satisfied with these orders, the manufacturer filed this batch of appeals.

3. We decided the identical dispute in appeals No. E/3494-3513/90-A by final orders No. 199-218/98-A dated 11.2.1998 see 1998 (76) ECR 320 (T). The order shows that prior to 1983, there was no relationship of any sort between the manufacturer and the bulk buyer. In 1983, the manufacturer purchased some shares of M/s. Escorts Ltd. The initial purchase was of 0.6% and the total shareholding subsequently rose to 2.13%. M/s. Escorts Ltd. has 45% shareholding in the manufacturing company. The earlier batch of appeals dealt with various price lists effective from 1.12.1982 to 24.7.1989. The Department contended that the two concerns being related, the assessable value should be based on the manufacturer's price to independent wholesalers. The manufacturer came up in appeal before the Tribunal challenging the orders passed by the lower authorities. We held that since M/s. Escorts Ltd. has 45% shareholding in the manufacturing concern, it has direct interest in the business of the manufacturer and since the manufacturer has 2.13% of shareholding in M/s. Escorts Ltd., the manufacturer has direct interest in the business of the latter and, therefore, the manufacturer and the bulk buyer must be regarded as having direct interest in the business of each other and, therefore, the two concern fell squarely within the definition of "related person" within the meaning of Section 4(4)(c) of the Act and, the lower

authorities were justified in upholding the relationship, rejecting the higher discount being granted to M/s. Escorts Ltd. and basing the assessable value on the lesser discount being allowed to independent wholesalers. On this conclusion, we dismissed the appeals.

4. The decision in the earlier set of appeals would clearly apply to the price lists in question in these appeals which relate to the period 1989 to 1991, since the appellant has no case that there has been any change in the pattern of shareholding. We, therefore, uphold the impugned orders passed by the Collector (Appeals) and dismiss the appeals following the earlier view taken by us.

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