

**Collector of C. Ex. Vs. Uni Deritend Precision Castings**

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

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

**Reported in :** (1999)(112)ELT860TriDel

**Appellant :** Collector of C. Ex.

**Respondent :** Uni Deritend Precision Castings

**Judgement :**

1. The Collector of Central Excise, Bombay has filed this appeal against the Order-in-Appeal, dated 24-2-1992 passed by the Collector (Appeals), Bombay setting aside the Order-in- Original, dated 26-2-1991 passed by the Assistant Collector of Central Excise, Bombay.

2. Respondent (Uni Deritend Precision Castings), engaged in the manufacture of castings, filed price lists in relation to castings to be supplied to M/s Mahindra & Mahindra and M/s. Geep Industrial Syndicate. It was found that both the buyers were advancing some money to the respondent. Show cause notice was issued stating that interest on the advance amount had not been included in the assessable value declared in the price lists though it should have been included and if equivalent amount of money had been borrowed from the Bank, appellant would have incurred interest liability, and proposing to approve the price lists after including the element of interest in the assessable value. The Assistant Collector confirmed the proposal in the show cause notice. The Collector (Appeals) set aside the order on the ground that nexus between the amounts of advance and the prices charged had not been established. This order is under challenge.

3. Show cause notice is bereft of all useful and relevant particulars.

The impugned orders show that the price charged by Mahindra and Mahindra was Rs. 57/- per unit for the first 10,000 pieces. This price included Rs.1/- towards development charges and the respondent received in advance an amount of Rs. 20,000/- which was adjusted towards the price for 10,000 pcs. and after the supply of the first 10,000 pieces, operative price would be reduced to Rs. 56 per unit. These facts will clearly show that the prices included amortised cost of development and the assessable value included amortised cost of development. It is also seen that as against the cost of Rs. 5.7 lakhs for the first 10,000 pcs. the advance received was only of Rs. 20,000/- comparatively an insignificant amount. The period during which the advance remained in the hands of the respondent is also not in evidence. The department did not rely on any specific material indicating nexus between the advance and the price. The castings are to be manufactured by the respondent according to the specifications of the buyers. In other words, these are not goods which can be mass produced and kept on the shelf for sale to general class of buyers. The Collector (Appeals), was, therefore, justified in holding that element of interest was not to be added to the assessable value.

4. The above facts are relevant to M/s. Uni Deritend Precision Castings. The respondents are two different manufacturers. They filed separate price lists for their products. Each of them received a show cause notice. There were two separate original orders. The assessee filed separate appeals before the Collector (Appeals) who passed a consolidated order. Hence the department ought to have filed two appeals but instead filed only one appeal. We are treating the appeal as having been filed in the proceedings relating to M/s. Uni Deritend Precision Castings. In this appeal, as we have already indicated, there is no justification for interference. We proceed on the basis that there is no appeal against the order passed by the Collector (Appeals) in the appeal filed by M/s. Dagar Forst Tools Ltd.