

**Collector of Central Excise Vs. Agarwal Cables**

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

**Decided On :** Jun-25-1998

**Reported in :** (1998)LC824Tri(Delhi)

**Appellant :** Collector of Central Excise

**Respondent :** Agarwal Cables

**Judgement :**

1. Appellant entered into a contract for supply of cables to U.P. Electricity Board on payment of agreed price plus Central Excise duty and Special Excise duty subject to maximum of 20%. This limit was agreed upon in view of the fact that the appellant was a small scale industry entitled to the exemption Notification 175/86 under which effective rate of duty would be 20% in all, up to clearance of the value of Rs. 75 lakhs. Full duty would be payable for clearances beyond the value of Rs. 75 lakhs. Appellant supplied the goods to the Board and paid the effective rate of duty for the clearances up to the value of Rs. 75 lakhs. In respect of clearances beyond this value appellant determined the assessable value after deducting 30% as duty from the total price received from the Board, which, however, took into consideration only 20% as effective duty. The department objected to this determination of the assessable value, determined the assessable value after deducting duty only at the rate of 20% from the total price and demanded differential duty on the differential assessable value.

The demand proposed in the show cause notice was confirmed by the Assistant Collector but his order was set aside by the Collector (Appeals). Hence this appeal

by the department.

2. The department had filed Appeal No. E/4772/91-A against a similar order passed by the Collector (Appeals) in favour of the present assessee. There were two other similar appeals filed by the department against two assesseees. These appeals were disposed of by Final Order Nos. 780 to 782/98-A, dated 21-5-1998 following an earlier Order No.751 /98-A, dated 2-5-1998 in Appeal No. E/5363/92-A in relation to another assessee. The Tribunal held that while determining the assessable value whatever duty was actually payable has to be deducted.

Since the actual duty payable for the clearances beyond value of Rs. 75 lakhs was 30%, such duty has to be deducted in arriving at the assessable value. Following the above view we decline to interfere and dismiss the appeal.

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