Cce Vs. Chem Equip Ltd.

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SooperKanoon Citation : sooperkanoon.com/14086

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-10-1998

Reported in : (1999)(82)LC638Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Cce

Respondent : Chem Equip Ltd.

Judgement :

1. This is a departmental appeal against Order-in-Original No. 26/90 dated 31.7.1990 passed by the Collector of Central Excise, Bombay withdrawing the show cause notice issued by the Assistant Collector to the respondent. We have heard both sides.

2. Respondent, engaged in the manufacture of S.O. Dyes and Organic Surface Active Agent, was filing price lists from time to time claiming deduction of 12.75% trade discount and certain post manufacturing expenses. Price lists were being provisionally approved allowing deduction of trade discount but disallowing deduction of other expenses. Respondent was paying duty on that basis, though under protest. While so, it was found that trade discount was not being uniformly given to all buyers. Accordingly, show cause notice dated 28.6.1989 was issued referring to the above facts and proposing demand of differential duty on the element of trade discount in respect of clearances during the period 1.6.1984 to 30.5.1989. Respondent contested the notice. The Collector of Central Excise took

the view that deductibility of the trade discount would be a matter for decision in the final order to be passed approving the price list and therefore the show cause notice was premature. He accordingly withdrew the show cause notice directing the jurisdictional Assistant Collector to examine this issue along with other issues at the time of finalisation of price lists and to take necessary action according to law. This order is being challenged.

3. Shri R.D. Negi, SDR referred to the memorandum of appeal in which it is stated that trade discount was not given uniformly to all buyers and cannot be allowed since finalisation of price lists is still pending before the Adjudicating Authority. This is a matter for the Adjudicating Authority to decide after granting due opportunity to the respondent. This was precisely what the jurisdictional Collector held.We find no error in the impugned order and accordingly dismiss the appeal.