

Cce Vs. Sparton Batteries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-19-1998

Reported in : (1999)(80)LC43Tri(Delhi)

Judge : U Bhat, S T K.

Appellant : Cce

Respondent : Sparton Batteries

Judgement :

1. Original order No. 168/90-91 dated 5.4.1991 passed by Additional Collector of Central Excise, New Delhi confirming demand of duty of Rs. 38,575.10 is under challenge in this appeal.

2. Respondent, engaged in the manufacture of electric storage batteries and battery plates since 1.4.1978 had not applied for central excise licence, nor followed central excise procedure and was clearing the excisable goods without payment of duty. This was discovered by the central excise officers who visited the factory premises on 29.3.1979.

It was found that during the period from 1.4.1978 to 29.3.1979, respondent had manufactured and removed 1448 storage batteries without payment of duty and without filing classification list or price list, had purchased 90 motorcycle batteries and sold the same in the respondent's own brand name, had charged different prices from different customers, which prices were different from the prices shown

in the respondent's trade price list and had manufactured and cleared battery plates without payment of duty. It was also found that the respondent was entitled to the benefit of full exemption for clearances up to the value of Rs. 5 lakhs under Notification No. 71 /78. Show cause notice dated 4.8.1979 was issued referring to the above facts and proposing demand of duty on the value of clearances beyond the first clearances of value of Rs. 5 lakhs. Though respondent resisted the notice, the Additional Collector confirmed the demand. In appeal, the Tribunal set aside this order and remanded the case for fresh decision directing the Authority to go into the allegation of varying discounts being allowed to different parties and to decide on the discount eligible for deduction, before arriving at the assessable value. After remand, the Additional Collector passed the impugned order holding that none of the invoices specifically referred to any discount. He also found that the price shown in every one of the invoices was lower than trade price declared in the trade price list and arrived at the assessable value on the basis of various invoice prices and confirmed the demand as indicated above. The present dispute relates only to the duty payable on the batteries.

3. It appears that the Additional Commissioner evaded instead of facing the issue. It may be that the sale invoice did not specifically refer to discount. But, the impugned order shows that the sale invoices showed prices lower than the price declared in the trade price list. It is obvious that the net prices shown in the sale invoices were arrived at after abatement of discount in each case. Therefore, the difference between the sale price in each of the invoices and trade price list would be the discount granted in each case. The question relates to the basis for grant of such varying discounts and admissibility of such discounts for abatement. This was the issue projected in the remand order and this issue was avoided by the Adjudicating Authority.

4. We, therefore, set aside the impugned order and remand the case to the jurisdictional Adjudicating Authority for deciding the case afresh in accordance with the direction given in the earlier remand order. The appeal is allowed.