

**Commissioner of Central Excise Vs. Escort (Jcb) Ltd.**

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

**Decided On :** May-04-1999

**Reported in :** (1999)LC733Tri(Delhi)

**Appellant :** Commissioner of Central Excise

**Respondent :** Escort (Jcb) Ltd.

**Judgement :**

1. By Order-in-Original dated 11-5-1994, Commissioner of Central Excise, New Delhi disposed of duty demands raised by the Department against respondents herein in four show cause notices. The Commissioner held that the abatement of 5% claimed by the respondents on account of dealer's commission from the retail price to arrive at the wholesale price was correct and the same was permissible deduction as sale commission under Rule 6(a) of the Central Excise (Valuation) Rules, 1975. The Department is in appeal against the said order on the ground that the commission which is paid by the respondents to their selling agents, i.e., dealers, for services rendered by them cannot be considered to be in the nature of trade discount qualifying for deduction in arriving at the assessable value of goods since such commission was not a trade discount given either to the wholesale buyer or to the retail buyer. The Department has relied on Supreme Court decision in *Coromandel Fertilisers v. Union of India* reported in 1984 (17) E.L.T. 607 (S.C.). It also contends that inasmuch as the respondents had not informed the Department that they had stopped selling their goods through their related person viz., M/s. Escorts Ltd. from 1-1-1988 (for which 5% commission was allowed

earlier), the extended period for raising duty demand was invocable. Further, appellants also contend that the fact that the dealer's margin of 5% comprise two elements viz., (i) sales commission and (ii) after sales-service commission, was not disclosed to the Department and therefore there was suppression of facts with intent to evade duty. To the extent the impugned order has not correctly decided the above issues, the Department seeks the setting aside of the said order.

2. Respondents have filed a Cross Objection in the matter and have contended that the deduction of retailer's margin to arrive at the normal price at which the goods were sold in wholesale at the time of removal from the place of manufacture was clearly admissible where the buyer was not a related person and the price was the sole consideration for the sale and therefore the impugned order had correctly applied the provisions of Rule 6(a) of the Central Excise (Valuation) Rules, 1975.

3. Ld. JDR Shri Shiv Kumar appearing for the Revenue, submitted that it was not in dispute that the goods were sold and supplied directly to the customers at the relevant time and the invoices did not show any deduction on account of sale commission. In the terms and conditions of the agreement between the respondents and the dealers, the dealers were required to promote the sale and service of the product so as to achieve the target as specified by the respondent company. The dealers were also to provide warranty service to the buyer and submit warranty service voucher. Also, as per the terms of the agreement, the sale commission was payable to the dealer only after the respondents had received full payment for the product sold by the dealer. The dealer was therefore merely an extended hand of the manufacturer and not an independent buyer and the goods were supplied to the dealer on the invoice showed sale price without any deduction. As regards warranty service performed by the dealer, the same was part of promotion of sale for which warranty service vouchers were submitted with the respondent company. All these showed that the dealer was merely acting as a commission agent. The commission which is paid to the selling agent was for services rendered by him and therefore such commission cannot be considered in the nature of trade discount qualifying for deduction in determining the assessable value of goods for determining excise duty since such commission is not a trade

discount given either to the wholesale buyer or to the retail buyer.

4. Ld. Senior Advocate, Shri A.N. Haksar appearing for the respondents and arguing the Cross Objection filed by the respondents submitted that the respondents were manufacturers of Excavators and Loaders which were specialised Earth Removing Vehicles and the customers were located all over the country and the equipment supplied required after sales-service. Till 31-12-1987 respondents were selling their products to M/s. Escorts Ltd., who in turn appointed dealers. The dealers also provided after sales-service. The respondents were paying duty on the price at which M/s. Escorts Ltd., were selling the goods i.e., 5% less the retail price since Escorts Ltd. was a related person of the respondents. Subsequently, the respondents had filed price lists and had claimed deduction from the retail price to arrive at the wholesale price in terms of Rule 6(a) of the Central Excise (Valuation) Rules, 1975. The authorities below had allowed the 5% deduction cannot be allowed from the retail price since the retail price should be the price for purposes of assessable value. Ld. Counsel submitted that Section 4(1) (a) provides for levy of duty on the normal price at which goods are sold in the course of wholesale trade where the buyer is not a related person and the price is the sole consideration for the sale.

In the facts of the instant case, the proviso to Section 4(1)(a) was not attracted. As such, when the goods are not sold in the course of wholesale trade, the section provides for arriving at the wholesale price from the retail price and as per the Central Excise (Valuation) Rules, 1975 for arriving at the assessable value from the retail price the only method was after arriving at the wholesale price. He submitted that for this purpose, it was Rule 6(a) of the C.E. (Valuation) Rules which was relevant. The said rule provides that where the goods are sold by the assessee in retail, the value shall be based on the retail price of such goods reduced by such amount as is necessary and reasonable in the opinion of the proper officer to arrive at the price at which the assessee would have sold such goods in the case of wholesale trade to a person other than a related person. In terms of the said rule, according to Ld. Counsel, the Department could not levy duty on the retail price without first granting adjustment under the Valuation Rules by taking deduction of 5% as agency commission and without arriving at the

wholesale price. He further contended that the law on admissibility of deductions qua commission paid to the commission agents was not applicable to the instant case since none of the dealers were Agents. As regards reliance placed by the Department on the Supreme Court decision in *Coromandel Fertilisers (supra)*, Id. Counsel submitted that the said case dealt with deductions claimed from the wholesale price in respect of sales through commission agents.

Since in the instant case the sales were directly made to the customers, the ratio of the said case cannot apply. The said price being a retail price, the same cannot be the basis for levying duty. He submitted that retail price is to be worked backwards to arrive at the wholesale price. Referring to the expression "would have sold...in the course of wholesale trade" in Rule 6(a), Id. Counsel submitted that if the respondent had sold the goods in wholesale trade, they would have to provide for dealers' discount which is essentially the dealers' margin including the component of after-sales service. The said discount given to the dealers is not includible in the assessable value although the same includes a component towards discharging warranty obligations and after-sales service. The same analogy would apply to cases where the goods were sold in retail and the assessee grants commission to its dealers for rendering after-sales, service, etc.

5. As regards invoking of the extended period of limitation, Id. Counsel contended that the Department was all along aware of the grant of 5% to dealers as their margin from the retail price and the Asst.

Commissioner had approved of the same and the Collector (Appeals) had also upheld the same. Price lists filed by the respondents in Part V (Retail Sales) was also available to the Department as well as R.T. 12 Returns along with the gate passes indicating that the goods were sold in retail directly to the customers. As such, there was no question of any suppression of facts by the respondents warranting the application of proviso to Section 11A(1) of the Act.

6. We have considered the submissions. We find that the respondent's contentions have merit. It is not in dispute that the goods were sold only in retail sale during the material period. In terms of Rule 6(a) of the Central Excise (Valuation) Rules, a reasonable amount has to be abated from the retail price to arrive at the wholesale

price. The actual quantum of abatement has been determined at the rate of 5% by the Asst. Collector. The same had been confirmed by the Collector (Appeals). As has been correctly observed by the Collector in the impugned order, the Department's case was not that the goods were not sold in retail after January, 1988 but that no abatement could be allowed from the retail sale price on the ground that Rule 6(a) was not attracted. It is not disputed that the nature of the goods is such that it can be sold "only in retail. We agree with the observation of the Collector that the Department has by disallowing the deduction virtually asked the duty to be charged at the retail price itself rather than working out the wholesale price from it. Further, we do not also find any substance in the allegation of suppression as there was no obligation on the part of the respondent to inform the Department of any change in their sale pattern since for purposes of arriving at assessable value, there was no additional monetary benefit accruing to them.

7. In the light of the above discussion, we reject the appeal filed by the Department and confirm the impugned order. The Cross Objection filed by the respondents also stands disposed of in the light of above.

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