

Hcl Picker Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-14-1999

Reported in : (1999)(114)ELT998TriDel

Appellant : Hcl Picker Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal arises out of and is directed against the Order-in-Appeal 626-C.E./MRT/98, dated 26-10-1998 passed by the Commissioner of Central Excise (Appeals), Ghaziabad.

2. Arguing for the appellants, Shri R. Krishnan, Id. Advocate submitted that the appellants are manufacturers of C.T. Scanners. C.T. Scanners were cleared from their factory to their depot for sale after filing necessary price declaration. They claimed a deduction towards retailing expenses to the extent of 1% to 1.5%. This retail margin was not allowed by the authorities below on the ground that transaction effected by the party was of wholesale trade and not retail. Shri Krishnan, submitted that in the instant case the item was supplied to the hospitals and nursing homes wherein the buyers have used the items for their own consumption. Further, he said that issue involved in this case has been covered by the ratio of the decision of Tribunal in the case of Modi Xerox Ltd. v. C.C.E. [1989 (40) E.L.T. 481]. View taken by the Tribunal was upheld by the Supreme Court as reported in [1998 (98) E.L.T. 12 (S.C.)]. Further, he submits that similar view was taken by the Tribunal in the case of Godrej and Boyce Mfg. Co. Ltd. v.

C.C.E.[1994 (71) E.L.T. 429].

3. Countering the arguments, Shri P.K. Jain, Id. SDR submits that it is clear from the facts of the case that item in question is sophisticated in nature and in view of the findings given by the authorities below, the item as such cannot be sold further and accordingly the transaction has to be treated as wholesale trade. He referred to the finding given by the Collector that the C.T. Scanners being costly and highly sophisticated, these equipments can be sold only against the specific orders. *Godrej and Boyce Mfg. Co. Ltd. v. C.C.E. (supra)*, it was held that "Considering the factual position in the present set of appeals, undisputedly, there is no sale to any dealer. It is not the allegation of the department that any of the customers under consideration has purchased the trucks for effecting any further sale. They all appear to have purchased them to be used in their normal activities, and the nature of transaction between the appellants and the consumers clearly indicates the sale in the nature of retail sale." 5. Section 4(4)(e) of Central Excises and Salt Act, 1944 defines "Wholesale trade" means sales to dealers, industrial consumers, Government local authorities, and other buyers who or which purchase their requirements otherwise than in retail". After considering the definition, the Tribunal has been consistently taking the view that if the item as such cannot be sold further and if it was used by the consumer for his own use the transaction has to be treated as retail.

There is also a clear finding by the authorities below in the instant case that the item as such cannot be sold further. The buyers in the instant case have purchased them and used in their normal activities and the nature of transaction between the appellants and the consumer clearly indicates that the same was in the nature of retail sale. In the facts and circumstances, following the ratio of the aforesaid decisions, we accept the contention of the party that transaction effected in this case is a retail sale and not the wholesale.

Accordingly, appeals are allowed with consequential relief.

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