

Commissioner of Central Excise Vs. Microtronics (India) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-28-2000

Reported in : (2000)(122)ELT579Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Microtronics (India) Ltd.

Judgement :

1. These two appeals are against the same impugned order. They are, therefore, being disposed of by this single order.

The show cause notice dated 10.06.1993 demanded differential duty amounting to Rs. 96,407/-. The Annexure to the show cause notice is reproduced below in toto: "M/s. Microtronics (I) Ltd., Pune having Registration No. 1006070357 are the manufacturers of goods namely "Microwave Oven" and parts thereof falling under Chapter sub-heading 8516.00 of GET A, 85.

The assessee has declared prices in Part I and Part II of price list frequently as per the provisions of Sec. 4 of CESA, 1944. On going through the price lists and GPs, it is observed that the assessee has declared the prices in Part I to the customers other than the class of buyers namely govt, semi-govt. and individual consumers.

The assessee is also not manufacturing the goods as per customers' specification/requirement.

The assessee is supposed to sell the goods to said customers at Part I prices declared by them, as they are not falling under class of buyers. Hence, assessee has to pay duty on Part I prices. As stated in Annexure B assessee has to pay differential duty as differential assessable value for the period Nov., 92 to May, 93".

3. Yet another show cause notice was issued on 03.12.1993 in which the differential duty demanded was Rs. 23,325/-. In the related appeal file, the copy of this show cause notice is not available but it is presumed that this notice would also go to read in the same manner since the two orders passed by the Asstt. Collector are identical. In both the orders, the Asstt. Collector confirmed the demands and also imposed penalties. The Collector (Appeals) set aside the orders. Hence, the present appeals from the Revenue.

4. We have heard Smt. R. Arya for the Revenue. The respondents were not present.

5. The exact allegation of the Revenue as regards the cause of differential duty is not clear from the show cause notice. The Asstt.

Collector held that dealers and distributors should not be held to be a separate classes of buyers and different prices could not be charged from them. The Collector (Appeals) observed that the assessee had only one normal price for their each model of microwave ovens. What differed was the discounts based on the quantity. He observed that the issue before him was not whether the dealers and distributors could be held to be separate classes of buyers but that whether the quantity discount was available or not. Citing the Supreme Court decision in the case of Bombay Tyres International, the Collector held that as long as the discounts were based on commercial practice, they could not be denied.

The claim made by the Revenue is as follows : "The assessee is banking upon the idea that depending upon the quantities lifted by their customers, suitable discounts can be given as per their discretion. The aspect is legally improper. It is evident that Section 4 does not admit all the actual prices being charged to different customers as "normal prices" even if these are genuine. Sec. 4 is till

based upon the concept of certain 'notional price' which has to be termed as the "normal price" to be applied uniformly, to a class of buyers irrespective of the actual prices charged in individual transaction.

The term "Notional Price" as per Sec. 4 is the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal where the buyer is not a related person and the price is the sole consideration for sale. The Section thus admits different "Normal prices" to different class of buyers but it does not admit each and every price charged by the assessee to its different customers as "Normal Price" for assessment purposes." "It is pertinent to note that the assessee has charged prices as per the quantities lifted by the customers, their territories and their long term potentials. These are exceptional cases and such exceptional prices cannot be accepted as they are not in line with the provisions of the laws. The discount allowed under Part II price list are admissible to a particular customer only and not to all other who lift equivalent quantity such a discount cannot be termed as a quantity discount." 7. The department has also doubted the propriety of the Delhi High Court's judgment in the case of Indian Rayon and Industries Ltd. 8. Right from the time of issue of the show cause notice to the filing of the appeals, we find that the department has not been able to even pinpoint the area of friction. From the issue of show cause notice to the contention in the appeal memorandum, it failed to make any meaning.

We find that various authorities have interpreted the meaning of the show cause notice in various manners. If the Asstt. Collector was correct in interpreting that the issue was whether dealers and distributors could be treated as separate class of buyers, then the Collector's orders are correct on the basis of case law analysing Sec.

4. In effect, after 1995, the amended Rule 173C itself carries forward this provision of Sec. 4 making every buyer a separate class of buyer.

9. The Collector (Appeals) makes a different interpretation and that is that the quantity discounts are admissible as long as they are given in a course of business. This interpretation is also unassailable.

10. We find these appeals to be devoid of any merits. These are dismissed.

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