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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Oct-18-2000

Reported in : (2001)(94)LC482Tri(Bang.)alore

Judge : S Peeran, S T S.S.

Appellant : Ballarpur Industries Ltd.

Respondent : Cce

Judgement :

1. The present appeal relates to five price lists filed by a manufacturer of Phosphoric Acid and Hydrochloric Acid at its chemical division. These price lists were filed in Part II by the appellant in respect of sales made to other buyers, being the dealers and a separate class of buyers who purchase the requirements otherwise than in retail.

The pattern of sales of the Phosphoric Acid to the customers was as under: 2. There is no dispute as regards the sales made to industrial consumers. The dispute in the present appeal relates to clearances made from the factory to different wholesale dealers at different prices for which the appellant entered into contracts and filed Part II price lists. The department contend that since there was no distinction, there cannot be a different class of buyers of Part II and Part I price and the Commissioner (Appeals) rejected the price list and has rejected the appellants' appeal.

3. Nobody appeared for the appellants. But vide their letter dated 11.10.2000 they had requested the matter to be decided on merits on the basis of the following decisions: (ii) CCE, Meerut v. Dharampal Satyapal Ltd. 1999 (81) ECR 151 (Trib.)Arkay Engg. Works v. CCE 1999 (112) ELT 846 (Trib.) : 1999 (80) ECR 622 (T) (v) CCE v. Asatnco Plastic Industries 1998 (98) ELT 116 (Trib.) : 1998 (74) ECR 619 (T) 4. Shri Section Kannan, Ld. DR appears for the department and submits that a class of buyer has not been defined in Central Excise Law and should be understood as the same class and no distinction can be made between wholesalers and special buyers and in this case those wholesalers who obtained goods on special contract price in Part II.Therefore, he supports the orders of the lower authorities and request for rejection of the present appeal.Synpro Industries v. CCE, Indore, vide their order reported at 2000 (40) RLT 507 (CEGAT), Hon'ble President along with Shri C.N.B. Nair, Member (T) had held as follows: It is clear from the records that Part II profortma sales were contract sales. It is settled law that such prices would rightly constitute the assessable value in respect of those goods and that the Part I price, covering the normal price at which goods are sold to dealers, would have no application for the assessment of goods sold on contract basis.

The Tribunal in the case of PCMI Ltd. v. CCE Madras 1996 (63) ECR 298 had also held that assessees having different price structures for wholesale buyers in different places for valid commercial reasons should be treated as different class of buyers. In the present case before us relying on these two decisions, we find that the special buyers have been differentiated and can be considered as special class by themselves and the Part II price filed can be accepted relying on the above two decisions of the Tribunal.

6. In view of our findings, we allow this appeal after setting aside the order of the lower authorities.

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