

Commissioner of C. Ex., Vs. Nath Pulp and Paper Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-22-2002

Reported in : (2002)(142)ELT689Tri(Mum.)bai

Judge : J Balasundaram, J T J.H.

Appellant : Commissioner of C. Ex.,

Respondent : Nath Pulp and Paper Mills Ltd.

Judgement :

1. The respondents herein are manufacturing Paper and Paper Board. They were clearing their excisable goods on payment of duty after allowing special discount and weight difference discount to their customers. The Assistant Commissioner of Central Excise by order dated 3-1-96 confirmed the demand of Rs. 60,369/- holding that discount was allowable during normal course of wholesale trade if its nature and its allowance was known prior to the removal of goods, while special discount by the respondents was allowed to certain customers and therefore could not be deducted from the assessable value and that the weight difference was also not a permissible deduction as it was not allowed during the normal wholesale trade and its nature, method and procedure followed did not have any legal backing. The Commissioner (Appeals) allowed the appeal of the respondent and set aside the order of the Assistant Commissioner holding that no evidence was produced by the department to show that the special discount and weight difference discount was not actually given to the dealers of the respondents or that these were not known prior to the removal of goods from the factory. Hence, this

appeal by the Revenue.

2. We have heard both sides. We find that the Commissioner has held, following the decision of the Supreme Court in the case of Union of India v. Bombay Tyre International, 1984 (17) E.L.T. 329 (S.C.) that there is no evidence led in by the department to show that special discount claimed to be given by the respondent on account of the quality of the paper being not up to the mark and weight discount claimed to be given when there is a difference in width etc. of the paper supplied by them from the customers requirements, were not actually given by the respondents to their dealers or that these are not known prior to removal of goods from the factory of the respondents. The Collector (Appeals) has accepted the contention of the assessee that this discount is given during the normal course of wholesale trade and he has also held that the Assistant Commissioner had no basis for concluding that the discounts are not known prior to the removal of goods. The Department has not brought any material on record to show that the above findings are factually incorrect. In fact the appeal before the Tribunal has been preferred only on the ground that the Commissioner (Appeals) has not discussed the parameters laid down in this aspects in the Bombay Tyre International case. We find that he has considered the above judgment and his findings based on the judgment are not challenged in the appeal memorandum. Hence, we see no substance in the appeal of the Revenue. We, therefore, uphold the impugned order and reject the appeal.

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