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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-30-1986

Reported in : (1986)(9)LC601Tri(Delhi)

Judge : M G Murthy, P A K.

Appellant : Auto Lamps

Respondent : C.C.E.

Judgement :

1. Briefly the facts are that the appellant company is engaged in the manufacture of auto-bulbs. They have four zonal distributors in the country who market their products which are branded as 'Allite'.

Nearest of these distributors is at Delhi. Apart from these distributors, appellants are also manufacturing auto-bulbs branded 'Mico' and 'Caltex'. These are stated to be supplied to 'Mico' and 'Caltex' as well as to Government departments. It is stated that 65% of their sale is through their four distributors and the Government departments, 20% is sold under the 'Mico' brand name and 15% balance is sold under the brand name 'Caltex'.

2. As per show cause notice issued to the appellants, it is alleged that appellants had claimed a trade discount of 35.57% and paid duty accordingly, whereas actually they had passed a trade discount of only 20% to their wholesale dealers. It is also alleged that M/s. Auto Lamps submitted two price lists for their products

No. 1/73 and No. 4/72. The Department's case is, that as a matter of fact, price list No. 4/72 would represent the correct assessable value of all the goods manufactured and should apply also to goods covered by price list 1/73.

Also the appellants were asked to explain why they should not be allowed trade discount of 20% instead of 35.57%. It is seen that in the Order-in-Original it was decided that (a) wholesale market exists at Delhi and since there is no ex-factory sale, the assessable value should be based on the prices of the distributors in the wholesale market; and (b) only discounts allowed by the distributors uniformly would be admissible under Section 4(a) of the Central Excises & Salt Act 1944.

3. In the light of the above, it was decided in the Order-in-Original that the discount uniformly allowed to the extent of 20% plus 5% alone is deductible for arriving at the assessable value and that this should be the basis for arriving at assessable value in all cases.

4. The above Order in-Original was quashed in appeal. The Appellate Collector of Central Excise held that there cannot be a single assessable value in respect of 'Mico', 'Caltex' and 'Allite' brands of products. It was held that assessable value of each of these brands should be determined separately on the basis of the price at which such brands are actually sold wholesale minus uniform discount allowed.

5. In respect of 'Allite' brand, it was held that there is nothing to hold that the four distributors of the appellants company are favoured buyers. Accordingly, it was decided that the assessable value in respect of 'Allite' brand should be based on the highest price at which the appellants sell their auto lamps to any of these four distributors.

6. It is against the above decision that the appellants have filed a revision petition application before the Government of India. On the setting up of this Tribunal, this has been transferred here and is now being treated as an appeal before us.

7. Shri N.C. Jain, Advocate appears on behalf of the appellants. He has made the following three points.

(1) There is no market at the factory gate and the assessable value should be determined on the basis of the manufacturer's price to the distributors in Delhi, which is the nearest market.

(2) There is no justification for the Department to insist that, to be admissible, discount should be uniform. In this connection, he has cited the decision of Union of India v. Jyoti Ltd., Baroda decided by the High Court of Gujarat 1978 ELT (J 238) : 1978 Cen-Cus 133D Gujarat.

(3) The appellants' prices to 'Mico' and 'Caltex' should be the basis for assessable value and not the prices at which 'Mico' and 'Caltex' sell their products.

8. Shri B.R. Tripathi, learned SDR states that only the minimum of the discount allowed by the appellants would be permissible. In this connection he cites the decision of the Tribunal in the case of M/s.

Standard Auto-parts Pvt. Ltd., Jodhpur v. Appellate Collector of Central Excise, New Delhi Order No. 152/84A dated 5.3.1984. The learned SDR has also cited the decision of the High Court of Judicature at Allahabad in the case of Shyam Glass Works v. Inspector of Central Excise, Sasni and Ors. 1979 ELT (J 460), according to which deduction of trade discount is permissible only when it is uniformly allowed to all.

9. We have carefully considered the facts of the case and the submissions made before us. So far as the issue of uniformity of discount is concerned, much water has flown down the Ganges since the judgment was delivered in the case of Shyam Glass Works (supra) not allowing trade discount merely because it was not uniformly allowed to all. In the case of Union of India and Ors. v. Bombay Tyres International Pvt. Ltd. 1984 (17) ELT 329 : 1983 ECR 1627D : ECR C 663 S.C., the Supreme Court decided that discounts allowed by the trade should be permitted to be deducted from the sale price if provided under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at the time of or prior to the removal of the goods. A.K. Roy v. Voltas Ltd. 1977 ELT (J 177) 1973 Cen-Cus Feb. 60 : ECR C 412 S.C.). clearly hold that trade discount need not be uniform and even if different rates of trade

discount are allowed by the manufacturer, a deduction could be permitted in relation to such different rates of trade discounts if they are not determined on any extra-commercial consideration.

11. We have carefully considered the decision of this Tribunal in the case of M/s. Standard Autoparts Pvt. Ltd. (supra) cited by the Department in their favour. However, it seems to us that the decision of this Bench in the case of M/s. Standard Autoparts Pvt. Ltd. was in the context of the facts of that case and we would, on the issue of validity of different rates of trade discounts, passed purely on commercial considerations, be guided by the decisions of the Hon'ble Supreme Court in the case of A.K. Roy v. Voltas Ltd. (supra) and Union of India v. Bombay Tyres International Private Ltd. (supra).

12. So far as the issue whether the assessable value should be based on the price of the appellants to the distributors or on the basis of prices of the distributors to their buyers is concerned, we have taken note of the fact that the Government of India in their Order No. 340/82 dated 5th May, 1982 have already decided that there is no adequate material to hold that the distributors of the appellants were favoured buyers. This has been admitted by the learned SDR, who has made no further submissions in the matter. We feel, therefore, that this issue does not survive for consideration as it is not shown at all before us that these distributors are favoured buyers. For this reason, the prices of the appellants to these distributors would be the proper basis for determination of assessable value.

13. In the Order-in-Appeal it has been held that the price at which the lamps are sold by 'Mico' and 'Caltex' would be the basis for determining the assessable value. On this issue, once again, we have now the benefit of the decision of the Supreme Court in the case of Joint Secretary to Government of India v. Food Specialities Ltd. . In that case Food Specialities Ltd. entered into a number of agreements with M/s. Nestle's Products (India) Ltd. to manufacture on their behalf sweetened condensed milk, soluble coffee, baby milk foods under certain trade mark in respect of which the latter was registered as the sole registered user in India. It was held in that matter by the Supreme Court that what are sold and supplied by the respondent are goods manufactured by it with the trade mark

affixed to them and it is the actual price of such goods that must determine the value for the purpose of assessment of excise duty. It was held that it was the wholesale price at which the goods with the trade mark affixed to them were sold by Food Specialities Ltd. to Nestle's Products (India) Ltd. as stipulated under the agreements, which would be the value of the goods for the purpose of excise duty. In view of this decision of the Supreme Court, the view taken by the Appellate Collector on this point is also untenable.

(a) The prices of appellants to their distributors would be the basis for determination of assessable value.

(b) In so far as the 'Mico' and 'Caltex' brand auto lamps are concerned, the prices of the appellants to 'Mico' and 'Caltex' and not the prices of 'Mico' and 'Caltex' to their buyers would be the basis for determining assessable value.

(c) The trade discount actually allowed on normal commercial considerations would be deductible from the price while determining the assessable value.

1. I have to say with respect, that to my regret, I have not been able to find any warrant for concluding that the Hon'ble Supreme Court had either in 1977 ELT 177 : 1973 Cen-Cus Feb. 60 : ECR C 412 S.C. A.K. Roy v. Voltas Ltd. or in 1984 (17) ELT 329 Union of India v. Bombay Tyres International Ltd. 1983 ECR 1627D : ECR C 663 S.C. occasion to consider the question of inclusion/exclusion of varying or different rates of discounts allowed by the assessee to different customers/distributors.

2. In the earlier case, the contention was that the volume of sales to distributors subject to uniform discount of 22% was very meagre and scanty in comparison with direct sales to consumers without any discount whatsoever and, accordingly, the price to such dealers cannot represent the wholesale cash price. No evidence was brought on record to prove that the 22% discount was not a trade discount. Accordingly, their Lordships did not go into the question as to whether it was a trade discount at all. For a determination of the "wholesale cash price", it sufficed that the price after discount payable in terms of the agreements with dealers had been at arm's length, so to say, regardless of the number of such wholesale

dealings, The question as to what should be the quantum of discount that is to be excluded from the computation of the assessable value, when varying discounts are offered by the manufacturer to diverse customers/distributors was not considered at all. Nor did it arise.

3. Likewise, the judgment reported in 1984 (17) ELT 329 was clarificatory of the decision in 1983 (14) ELT 1896 and is general on its terms in regard to discount. The aforesaid question of varying discounts was not considered.

4. In the circumstances, we are bound by our decision in Appeal No.ED(SB)(T) No. 15/77-A Standard Auto Parts Ltd. Jodhpur v. Appellate Collector of Central Excise, New Delhi cited to us, unless, on facts, it is distinguishable.

5. Under the amended Section 4 of the Act, there could undoubtedly be a plurality of assessable values depending upon a number of classes of buyers to whom different discounts are offered in the usual course of business. This is not, however, the case specifically under the unamended Section 4. Nevertheless, following respectfully the ratio of the judgment of the Hon'ble Supreme Court in 1983 (14) ELT 1896 : 1983 ECR 1627D, we had held in Appeal No. ED/SB(T)/113/77-A Kores (India) v. Collector of Central Excise, Bombay that there could be a plurality of assessable values under the unamended Section 4 of the Act as well.

6. In the premises, notwithstanding that it is the old Section 4 that was applicable in the instant case, there could be a plurality of assessable values depending upon varying rates of discount to different classes of buyers. That was not the case in the Appeal of M/s. Standard Auto Parts adverted to in para 4 (supra). There was no evidence that different rates of discount were allowed to different classes of buyers in that case.

(a) The Appellant filed a price-list No. 4/72 effective from 1.12.1972 for "Allite" brand bulbs-their own brand-disclosing a discount of 35.57% to their distributors. The price-list was provisionally approved on 28.3.1973.

(b) The Appellant also filed a price-list No. 1/73 effective from 11.7.1973 for bulbs manufactured for and on behalf of M/s. Mico disclosing a trade discount of 36%. This was also provisionally approved on 27.9.1973.

(c) A notice was issued on 23.7.1974 requiring the Appellant to show cause as to why (i) the price-list No. 4/72 should not be approved after scaling down the discount to 20%.

(ii) the price-list No. 1/73 should not be cancelled and the prices declared in Price-list No. 4/72 should not be made applicable in the case of goods covered by the said list, and (iii) provisional assessments not finalised accordingly and differential duties recovered.

(d) In terms of the adjudication order dated 13.11.1975, the price-list No. 4/72 was approved subject to 20% discount only and the pricelist No. 1/73 was cancelled and it was held that the assessable value approved in the case of the price-list No. 4/72 would govern the goods covered by the price-list No. 1/73 as well.

(e) In an appeal, the aforesaid order was quashed, the assessable value was required to be re-determined on remand (vide Appellate Collector's Order dated 13.8.1976).

(f) After the remand, by another adjudication order dated 13.1.1977, both the price-lists were approved subject to deduction of discount to the extent of 20% plus 5%-the one which is allowed by zonal distributors in the course of wholesale trade to independent buyers.

(g) In an appeal against the aforesaid order, it was held (Order of the Appellate Collector dated 14/25.2.1978) that- (i) the wholesale cash price for the three brands should be different, (ii) the wholesale cash price for "Allite" bulbs covered by Price-list 4/72 would be the one highest at which they are sold to any of the distributors. The minimum discount uniformly allowed to all the four distributors would be the permissible discount, and (iii) the assessable value of the bulbs manufactured for others like Mico shall be the price at which they themselves sell to their customers minus the discount allowed by them.

(g) Aggrieved by the aforesaid order of the Appellate Collector, the Appellant filed a Revision to the Government of India on or about 7.8.1978.

(h) The Government of India as well proposed to revise the order but then the proposal would appear to have been dropped notwithstanding the issue of a notice to show cause.

8. In so far as discount in respect of goods manufactured under the Appellant's brand name (Price-list No. 4/72) is concerned, it is not a case of varying discount to different classes of buyers but different discounts in the one and only one class of buyers. Sales were effected to Appellant's distributors at varying rates of discount. It must, therefore, be held, in agreement with the learned Appellate Collector that the assessable value will, necessarily, have to be the highest price at which they are sold to any distributor. In other words, it is only the minimum discount allowed that can be permitted to be deducted.

This also accords with our view in the judgment of the Tribunal in Appeal No. ED (SB)(T) No. 15/77-A Standard Auto Parts Ltd. Jodhpur v.Appellate Collector of Central Excise, New Delhi cited to us and referred to in Para 4 supra.

9. I agree, however, that the assessable value for the goods manufactured for others like M/s. Mico will have to be the price at which the goods are sold to the brand name owners and not the price at which they themselves sell them to their customers.

10. In view of the difference between both of us on the quantum of discount to be deducted in the computation of the assessable value of the goods sold to the Appellant's distributors, the records of the case may be placed before the Hon'ble President for reference to a third Member.

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