

Commissioner of Customs Vs. Stp Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-08-2003

Judge : S T Gowri, K Kumar

Appellant : Commissioner of Customs

Respondent : Stp Ltd.

Judgement :

1. STP Ltd., the respondent to this appeal, imported 21 tons of aluminium foil coated with bitumen. In the bill of entry that it presented for clearance of the goods, it declared the CIF value to be US\$ 65,157.06. It has noted that the invoice accompanying the goods issued by Isoltema S.P.A., Italy, gave a discount of 70% on unit price of the goods. Following issue of notice on the ground that this discount was abnormally high, the Assistant Commissioner passed orders denying this discount and determined the assessable value accordingly.

The importer appealed this order contending in the appeal that this was the standard discount available to all persons and producing before him certificate issued by Isoltema S.P.A., Italy, that discounts to this extent were being given to buyers elsewhere. Such discounts varied from 75 to 85% depending upon quantity and in the case of the respondent, it had not been extended on the ground that it had purchased 21 tons. The Commissioner (Appeals) accepted these submissions and found that nothing abnormal or untoward about this discount and ordered assessment on the basis of the invoice price. This appeal is against that order.

2. The ground in the appeal is that the discount is abnormal and there is no specific discount schedule. The appeal however does not cite anything to show that this discount is not in the nature of commercial discount, in that it is not uniformly extended. The fact that the price list of the supplier does not specifically mention this discount does not lead automatically to its rejection. What has to be seen is whether in actual practice, such discount is extended and it is based on commercial considerations. If so, notwithstanding that it does not figure in the price list, it will be eligible for deduction. It is a well known commercial practice, domestic as well as international, for prices to be determined on the basis of negotiations, in which the quantity ordered or expected to be purchased by a person is a significant factor. Apart from the fact that the case is covered in the respondent's favour by the judgment of the Supreme Court in *Eicher Tractors Ltd. v. CCE* 2000 (122) ELT 321, we do not find anything in the department's appeal to impel us to believe that the discount was not extended in the usual course of commerce.

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