

Electrolux Kelvinator Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-12-2003

Reported in : (2004)(91)ECC178

Judge : N T C.N.B., P Chacko

Appellant : Electrolux Kelvinator Ltd.

Respondent : Cce

Judgement :

1. The appellant is manufacturer of refrigerators which are liable to central excise duty on ad valorem basis. Under the impugned order the Commissioner (Appeals), Customs and Central Excise, Jaipur has confirmed a short-levy demand of Rs. 2,76,95,173/- on the appellant. A penalty of Rs. 50 lakhs has also been confirmed. The duty demand is in respect of refrigerators cleared by the appellant during the period May 1996 to 19.5.1998. The demand was raised under 9 Show-cause Notices issued on 3.12.96, 2.4.97, 27.6.97, 30.7.97, 29.10.97, 26.12.97, 23.2.98, 15.5.98 and 4.8.98.

2. The subject of dispute is the valuation of the refrigerators. At the time of original clearance of the goods, the appellant deducted the under-mentioned discounts from sale price of the goods and treated the amounts so obtained as the assessable value and discharged central excise duty at the rates applicable: The impugned order has held that these discounts like service discount, redistribution discount, special discount, extra trade discount, quarterly discount, regional

discount, introduction discount are not admissible discounts. The Commissioner (Appeals) has also observed that these discounts are in the nature of incentives or are expenses for popularizing the brand and are therefore, not eligible discounts. It has also been mentioned that these discounts were not passed on their availability is not known to the buyers through any consistent sale policy and are discretionary.

3. In the present appeal, it is the submission of the appellant that the finding that the above discounts were not eligible to deductions is contrary to settled law. It has been pointed out that Apex Court has held in *Union of India and others vs. Bombay Tyres International Pvt.*

Ltd. (2002-TAXINDIAONLINE-33-SC-CX) that trade discount, by whatever name known prior to removal of goods, even though payable subsequently, is permissible for deduction .The appellant has also submitted that the observations of the Commissioner (Appeals) that discounts are not known is not correct in the facts of the case, inasmuch 90% of the discounts were given in the invoices themselves.

During the hearing of the case, the appellant has referred us to the relevant invoices in support of their contention. It has also referred to price declarations made to the Department to substantiate the submissions. The remaining discounts are also passed on subsequent to sale through credit notes. During the hearing of the case, learned Counsel for the appellant has pointed out that the only discount which had not been passed on fully is quantity discount in certain cases. He submitted that these discounts were conditional to buyers purchasing targeted quantities and in certain cases where such targets were not met by the buyers, the discount was not passed on. Learned Counsel submitted that duty liability on account of such quantity discount which was not passed on, worked out to Rs. 60,52,682/- while during the investigation of the case the appellant had deposited a sum of Rs. 1.5 crores in April 1998.

4. The impugned order has confirmed a penalty of Rs. 50,000/-. The submission of the appellant on this count is that all the demands in the present case were raised during the normal time limit as provided under Section 11A of the Central Excise

Act. It is submitted that, to a case where demand is raised during normal period penalty under Rule 173Q of the Central Excise Act is not attracted. The appellant has relied on the decision of the Apex Court in P & B Pharmaceuticals (P) Ltd. vs. CCE, -2003 (2003-TAXINDIAONLINE-22-SC-CX) in support of this submission.

5. Learned SDR has pointed out that it is well settled - 2001 (130) ELT 722 (SC) that quantity discounts are eligible for deduction only to the extent they are passed on. He has, therefore, submitted that the duty demand on this count is fully justified. He also pointed out that addendum to the Show-cause Notice issue on 13.9.99 had made specific allegations that the assessee did not correctly declare the assessable value and had claimed discounts which they knew, would not be passed on. So it was liable to penalty under Rule 173Q. He also pointed out that penalty is mandatory and only quantum of penalty is discretionary in the light of the decision of the Apex court in the case of Zunjarrao Bhikaji Nagarkar vs. Union of India- 6. We have perused the records and have considered the submissions made by both side. It is now held that trade discounts, by whatever name described, are eligible for deduction from the price for the purpose of computation of assessable value of excisable goods. Therefore, the lower authorities were not justified in denying discounts given under certain headings. That the discounts as observed by the Commissioner (Appeals) were intended as incentive, do not detract from this position. In fact, most discounts are to gain an advantage in sale of the goods. This being purely a commercial consideration, such discount remain in the mainstream of trade discounts. The observation that these discounts were not known at the time of sale is also not justified.

This observation is without basis. The appellant had been making regular price declarations and that those declarations had mentioned various discounts. Further, the declarations also mentioned that discounts may be given at the time of sale or subsequently. From the price declaration effective from 1.2.97 we find that it had declared the following discounts : All these discounts may be given either in the invoice or through credit notes at the end of the financial year or earlier." Similarly, price declaration with effect from 24.11.97 mentioned the following discounts: The declaration also contained a NOTE to the effect that discounts may be given either in the invoice or through credit notes at the end of

the financial year or earlier. Similarly invoices also show that discounts were being given in the invoices themselves. For example, invoice No. 10 dated 8.6.96 to M/s Johnson Electronics allowed distribution discount, service discounts, cash discount and extra trade discount. Invoice No. 29 dated 13.7.96 to M/s National Electronic Centre Pvt. Ltd. allowed distribution discount, service discount, cash discount, extra trade discount. From the above, it is clear that discounts under various headings were actually being given and these discounts were declared in the price declaration as well as in the sale documents. Thus they were known at the time of sale. These discounts satisfied the criterion for eligibility to deduction from sale price.

7. The position however, is quite different in respect of quantity discounts. Learned SDR is right in his submission that it is well settled that the extent of deduction permissible for quantity discount is the discount actually given and availed of. The appellant has admitted that certain quantity discounts originally deducted while discharging duty at the time of clearance of the goods, did not get passed on, on account of buyers not meeting purchase targets. These amounts were therefore, not eligible for deduction and duty is payable.

Duty so payable is Rs. 60,52,682/-. The lower authorities were correct in demanding this amount as short-levy. Accordingly, the demand to the extent is confirmed.

8. With regard to penalty, it is well settled (P & B Pharmaceuticals supra) that no penalty is attracted in the case of recovery of short-levy relating to normal period as stipulated in Section 11A of the Central Excise Act. All the Show-cause Notices in the present case were issued within normal period as provided under Section 11A. Therefore, imposition of penalty was not warranted. Penalty of Rs. 50,000/- imposed is set aside.

9. In view of what is stated above, appeal is partially allowed by setting aside the penalty and setting aside duty demand in excess of Rs. 60,52,682/-. Deputy Commissioner shall adjust this amount from Rs. 1.5 crore already paid by the appellant and return the remaining amount to the appellant.