

Commissioner of Central Excise Vs. Goetze India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-06-2004

Reported in : (2005)(179)ELT186TriDel

Judge : S Kang, Vice-, A T V.K.

Appellant : Commissioner of Central Excise

Respondent : Goetze India Ltd.

Judgement :

1. In this appeal, filed by Revenue, the issue relates to the eligibility of deduction on account of discount in determining the assessable value under Section 4 of the Central Excise Act.

2. We heard Smt. Krishna A. Mishra, learned S.D.R. and Sh. Gopal Prasad, Representative of M/s. Goetze India Ltd. The Respondents manufacture piston rings and gudgeon pins; that they give trade discount @ 27.5 per cent to their Chief Stockists and 25 per cent trade discount to their sub-stockists of Chief Stockists and remaining 2.5 per cent trade discount was being allowed to Chief Stockist. The Assistant Commissioner disallowed the trade discount of 2.5 per cent and the Range Superintendent directed the Respondents to deposit the duty on account of disallowance of the said trade discount. On appeal, filed by the Respondents, the Commissioner (Appeals), under the impugned order, has held that the issue is covered in their favour by the Appellate Tribunal vide Final Order No. 1251 /98-A, dated 21-8-1998; the Tribunal has held therein that sales were

effected only to wholesale dealers at 27.5 per cent discount and at their instance some goods were diverted to certain other dealers with whom the wholesale dealers were sharing discount. The Commissioner (Appeals) has also mentioned that the Appellate Tribunal has allowed the appeal filed by M/s. Escorts Ltd. vide Final Order No. 600/99-A, dated 11-5-1999 which has also been confirmed by the Supreme Court in Civil Appeal No.2659/99 [2003 (156) E.L.T. All] (S.C.)]. The learned Representative of the Respondents has also submitted that in their own matter, the Supreme Court has affirmed the allowance of the discount by a decision in 2002. On the other hand, the learned SDR has relied upon the recent decision of the Supreme Court in the case of Escorts Ltd. v. Collector of Central Excise, Chandigarh, 2003 (153) E.L.T. 263 (S.C.) wherein the issue for consideration was "whether the differential discount between the Stockists and sub-stockists passed on to the stockists by the assessee, is deductible in assessing the excisable value of the goods sold to the sub-stockists." In the said matter, M/s. Escorts Ltd., manufactured parts and accessories of motor vehicles, tractors, trailers and other stationery/diesel engines. They were giving 27.5 per cent discount to their stockists and 25 per cent discount to sub-stockists and the differential discount of 2.5 per cent was passed on to the stockists by the assessee. The Supreme Court has held in the case of stockists that the normal price of tractor shall be the cost in the price list less discount @ 27.5 per cent. The Supreme Court has, further held that "in relation to the sub-stockists, the tractors were sold at 25 per cent discount on the cost shown in the price list, therefore, their normal price of tractors will be the cost shown in the price list minus 25 per cent discount." The Supreme Court did not accept the contention of the appellants therein that the differential discount of 2.5 per cent should also be deducted from the price. The Supreme Court has held as under : "The differential discount of 2.5 per cent passed on to the area stockists by the assesseees was rightly disregarded as it is not and it cannot be treated as a discount given to the sub-stockists and it has never been the case of the assesseees also. It cannot also be treated as discount given to the area stockists it though it was passed on to them because it does not relate to tractors sold to them but relates to the tractors sold to the sub-stockists." This judgment of the Supreme Court squarely applies to the facts of the present case as it is the latest judgment of the Supreme Court on the issue of

eligibility of such discount. We, following the said judgment, set aside the impugned order and allow the appeal filed by the Revenue.

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