

ispat Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-30-2004

Reported in : (2005)(102)ECC94

Judge : S T S.S., T Anjaneyulu

Appellant : ispat Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal arise against Order-in-Appeal No. 387-CE/APPEAL/ BHOPAL/ 99 dated 8.3.2000 passed by the Commissioner of Customs & Central Excise, Bhopal.
2. The appellants are engaged in the manufacture of Galvanised Steel Sheets/Hot Rolled Sheets/Cold Rolled Sheets falling under Chapter 72 of the Central Excise Tariff Act, 1985, having its factory at Kalmeshwar.
3. The appellants sell all its products through its own depots located at different places in India. There is no factory gate sale at all, but the sale is exclusively through depots.
4. The rate of duty on the products manufactured by the appellants being dependent on value; the appellants were required to file price lists under Rule 173-C (prior to 1.4.94 for approval of the proper officer and declaration. Accordingly, the appellants filed price lists in Form-IV and Declaration in the given form. In the

price lists/declaration, the appellants had declared depot sale prices and from those prices, the appellants had claimed deduction for arrival at the assessable value under Section 4 of the Central Excise Act, 1944.

5. Show Cause Notice was served proposing to disallow cash discount, quantity discount, deduction towards un-loading charges and deduction towards quality of products. The appellants claim that the deductions were permissible for arriving at the assessable value from depot sales price.

6. The Asst. Collector, Central Excise, Division-II, Nagpur, by Order dated 17.2.95 disposed of the price lists/declarations as well as the demand Show Cause Notice, disallowing the discounts as proposed. It is observed that no documentary evidence is available to show that the discounts had been passed on to the buyers. The impugned order passed by the Commissioner (Appeals) upheld the Order of the adjudicating authority. He has observed that the discounts were not being passed on to each and every eligible customer in the normal course of trading.

Hence this appeal.

7. The appellants rely upon the decision reported in 2000 (117) ELT 648 (Tribunal) in the case of Andhra Pradesh Paper Mills Ltd. v. C.C. & C.Ex. (A), Hyderabad. In the aforesaid decision, it is observed that quantity discount is allowed even if not shown in the invoice at the time of clearance from factory on stock transfer basis but passed on by credit notes later, on buyer's purchase performance from depot becoming known, so long as existence of the discount structure is known to all buyers before removal of the goods and assessee undertakes to provide similar discounts at similar levels to all buyers. Further, it is observed that freight subsidy is also allowed to upcountry customers by credit notes in case consignment is sent by road, incurring higher cost, because of non-availability of railway wagons.

8. The appellants also rely upon the decision reported in 2002 (136) ELT 382 (Tri.-Kolkata) in the case of Kesoram Raoy v. CCE, Calcutta-II. In this decision, it is observed by the Tribunal that the cash discount is an admissible deduction for assessable value as long as the same is being offered to all buyers, who satisfy

conditions of scheme and is known to the buyers before removal of the goods, irrespective of whether all the buyers avail of the benefit of the same or not. Further observed that transportation cost from depot to place of buyer is admissible deduction. Collector of Central Excise, Ahmedabad v. Gujarat Bottling Co., 1998 (99) ELT 330 (Tribunal), it is observed that since the rate of discount and the condition of discount for ground of discount were not known before removal, the mere postponement of the quantification and payment of discount to the end of fortnight or month cannot be a valid ground to disallow the discount in question.

10. Following the principles laid down in the aforesaid decisions, this matter required to be remanded back to the original adjudicating authority to reconsider the same in respect of the discount claim by the assessee for arriving at the assessable value. Accordingly, the appeal is allowed in remand in the above terms.

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