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Bently Nevada (Sales and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-01-2005

Reported in : (2005)(101)ECC181

Judge : S Kang, Vice, N T C.N.B.

Appellant : Bently Nevada (Sales and

Respondent : Cce

Judgement :

1. The issue raised in this appeal is the valuation of vibration monitoring machines imported by the appellant from is Holding Company in the United States. The Holding Company is the manufacturer also.

2. The facts of the case are that all sales to India by the Holding Company are based on list price. Direct buyers obtained discounts. The discounts are at various rates. In the case of BHEL, the discount was found to be 17.5%. The Holding Company allows the appellant a discount of 20%. The impugned orders have held that the appellant's transaction value should be loaded by 15% for the purpose of assessment of the machines imported by them. the reason given for this loading is that the appellant received 15% commission in regard to sales to India.

3. The contention of the appellant in the present appeal is that no loading of the transaction value is warranted in the facts of the case.

It is being pointed out that when a stranger like BHEL is allowed a discount of 17.5% on the list price, there is not reason to deny the same extent of discount to the appellant, who are a bulk buyer of the goods. With regard to the higher (2.5%) discount given to the appellant, it is being pointed out that this also is required to be allowed for the purposes of assessment inasmuch as it is on account of the 'level' of trade. The submission is that, while the appellant is a trader who buys and resells, BHEL is a consumer. The counsel for the appellant has pointed out that difference between trader price and consumer price remains accepted in the valuation rules, inasmuch as adjustment on account of level of trade is specifically provided for in Rule 5 of the Valuation Rules.

4. We have perused the records and heard the ld. SDR also. The submissions of the appellant merits acceptance. Valuation Rules specifically provides for adjustment in value towards level of trade (whether trader price or consumers price) as well as quantum of sales.

In the present case, the appellant as a subsidiary imports, stocks and sells. Therefore, a higher quantum of discount is justified. In this legal and factual situation, we find no justification for the addition of commission ordered under the impugned orders. The transaction value was required to be accepted for the valuation of the machines. The commission which the appellant received on sales to India is all together irrelevant for the purpose of valuation of the appellant's imports.

5. In the result the appeal succeeds and is allowed with consequential relief, if any, to the appellant.

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