

**Collector of Central Excise Vs. R. Gac Electrodes (P) Ltd.**

**Collector of Central Excise Vs. R. Gac Electrodes (P) Ltd.**

**SooperKanoon Citation :** [sooperkanoon.com/3797](http://sooperkanoon.com/3797)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Sep-09-1987

**Reported in :** (1987)(14)ECC40

**Appellant :** Collector of Central Excise

**Respondent :** R. Gac Electrodes (P) Ltd.

**Judgement :**

1. The appellants manufacture Welding Electrodes. They were selling their entire production to M/s. J.B. Advani (Mysore) (P) Ltd. (hereinafter referred to as J.B.A.Co.). They were giving discount of 27.5% to J.B.A.Co. The point of dispute in this appeal is whether this discount should be disallowed for the purpose of determining the assessable value of the goods in terms of Section 4 of the Central Excises and Salt Act, 2. The period of controversy is from 25-4-1983 to 30-11-1983. The appellants filed a price list in Part I in which they claimed deduction of 27.5% discount allowed to J.B.A.Co. The department approved the same. Later, on 17-11-1983, the department came to know that there was an agreement between the appellants and J.B.A. Co. according to which J.B.A.Co. was to organise sales promotions, marketing, distribution and other services on behalf of the appellants. Thereupon, the department issued a show cause notice on 14-12-1983 proposing to disallow the discount of 27.5%. On adjudication, the Assistant Collector held that the price disclosed by the appellants in the price list was not the sole consideration for sale. On that ground, the Assistant Collector disallowed the entire discount of 27.5% and confirmed the demand for short levy made in the

show cause notice under Section 11A of the Act.

In appeal, the Collector (Appeals) held that the Assistant Collector had not adduced any evidence to arrive at the conclusion that J.B.A.Co.

and the appellants were associated with each other and had mutual business interest nor the agreement revealed any such thing. The Collector (Appeals) set aside the Assistant Collector's order. The department is now in appeal before us against this order-in-appeal.

3. The prayer made in the written appeal memorandum is to restore the Assistant Collector's order, in other words, to disallow the entire 27.5% discount on the following grounds :- (1) J.B.A.Co. was a 'related person' of the appellants since both of them were interested in the business of each other as revealed by the agreement.

(2) In the alternative, the relationship between the appellants and J.B.A.Co. was not that of principal to principal but as between of principal and agent and the discount of 27.5% was really agent's commission and hence not deductible.

4. We have heard both sides and given the matter our earnest consideration. The first ground of the department that J.B.A.Co. was a 'related person' of the appellants goes beyond even the Assistant Collector's finding whose order the department wants to be restored.

The respondents stated that both the appellants as well as J.B.A.Co.

were separate limited companies and neither of them had any share holding in the other. Possibly sensing the weakness of this ground, it was not really pressed before us during the hearing. The ground which was really pressed for by the learned representative of the department was the second ground, i.e., that the relationship between the appellants and J.B.A.Co. was that of a principal and agent. In this connection, objection was taken by the learned representative of the department in respect of the following features of the agreement between the two :- (i) J.B.A.Co. was to maintain adequate show rooms, sales staff and stocks at all times all over the country for marketing the appellants' goods.

(ii) J.B.A.Co. was to render technical service to Government department and Semi-Government Organisations to whom the appellants sold the goods directly.

(iii) On termination of the agreement, the entire unsold saleable stocks lying with the J.B.A.Co. was to be taken back by the appellants at the invoiced value.

(iv) J.B.A.Co. was to organise at its own cost sales promotions, publicity and advertisement of the appellants goods.

We find that maintenance of adequate show rooms, sales staff and stocks is a standard feature of all present day distribution agreements and no objection could be taken to it. It is, in fact, a normal part of the modern marketing techniques. No doubt, J.B.A.Co. rendered technical services to Government Departments and Semi-Government Organisations to whom the appellants sold their goods directly but J.B.A.Co. got fully compensated for it as it received overriding commission equal to the difference in the discount given to the Government department/organisation and the normal discount given to J.B.A.Co.

Clause 11 of the agreement regarding repurchase of unsold stock by the appellants in the event of termination of the agreement was only intended to avoid distress sale of the appellants' goods by the J.B.A.Co. when it ceased to be the authorised distributor of the appellants, explained the respondents. We find the explanation acceptable. No objection could be taken to Clause 11 of the agreement.

The fourth item of the agreement regarding sales promotion by J.B.A.Co.

at its own cost did not, by itself, turn J.B.A.Co. into an agent of the appellants. On the contrary, we find that Clause 4 of the agreement stipulated that J.B.A.Co. was to purchase the appellants' products "as an independent principal and sell them as such". Further, Clause 5(a) of the agreement permitted J.B.A.Co. and their dealers to sell the appellants' goods on prices even lower than the listed prices published by the appellants. The agreement shows that the relationship between the appellants and the J.B.A.Co. was that of a seller and buyer.

J.B.A.Co. was to pay for the goods and on payment the property in goods passed on to J.B.A.Co. which it could resell even at lower prices than those stipulated by the appellants. The role of J.B.A.Co. was not that of a commission agent nor did the property in the goods delivered to J.B.A.Co. vest in the appellants.

5. We, therefore, find no force in the second ground of the department either. However, it is an admitted position by both sides that J.B.A.Co. was to organise sales promotion, publicity and advertisement of the appellants' goods at its own cost. This was an additional consideration which J.B.A.Co. was paying and the appellants were receiving for sale of the goods over and above the price disclosed in the price list. To this extent, the Assistant Collector's finding that the disclosed price was not the sole consideration for the sale was correct on facts. However, where the Assistant Collector went wrong was that for that reason he disallowed the entire discount of 27.5%. The situation here was such as attracted the provision of Rule 5 of the Central Excise (Valuation) Rules, 1975. This rule reads as under :- "5. Where the excisable goods are sold in the circumstances specified in Clause (a) of Sub-section (1) of Section 4 of the Act except that the price is not the sole consideration, the value of such goods shall be based on the aggregate of such price and the amount of the money value of any additional consideration following directly or indirectly from the buyer to the assessee." According to his own finding, the Assistant Collector was not entitled to disallow the entire 27.5% discount but only to add the money value of the additional consideration for the sale. The legal position that cost of advertisement and publicity is includible in the assessable value of the goods has been stated clearly in the judgment of the Hon'ble Supreme Court in the case of Bombay Tyres International Limited [1983 ELT (14) 1896 (S.C.) - para 49].

7. In the circumstances, we set aside the impugned order of the Collector (Appeals) and allow this appeal in terms that the Assistant Collector shall determine the money value of the additional consideration for the sale, add only that much to the assessable value of the goods and revise the demand for short levy accordingly.