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Modi Tyre Factory Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-2005

Reported in : (2005)(188)ELT328TriDel

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

Appellant : Modi Tyre Factory

Respondent : Cce

Judgement :

1. The appellant is a manufacturer of tyre. Sales are from its depots.

The dispute in the present case is about the valuation of tyres sold from the depot during 1998-99. The specific grievance of the appellant is that the Revenue authorities did not allow deduction of two items while fixing assessable value for the purposes of levy of excise. These items are, loading charge at depot and exclusive dealer discounts.

2. The contention of the learned Counsel for the appellant with regard to the first item is that only loading charge at the factory is liable to be regard to the first item is that only loading charge at the factory is liable to be included and not loading charges thereafter. In support of this contention, reliance is being placed on the decision of the Apex Court in the case of Indian Oxygen Ltd. v. CCE .

3. As against this, the submission of the learned DR that during the period in question, depot was liable to be treated "as place of removal" in view of the

following amendment in section 4 in 1996:- (i) a factory or any other place or premises of production or manufacture of the excisable goods; (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory and" The contention of the learned DR is that the Apex Court's ruling with regard to inclusion of cost of loading at the factory becomes equally applicable to loading cost at the depot in view of the amendment.

4. On the second issue of discount given to exclusive dealers, the submission of the learned Counsel is that it is well settled that discount do not have to be uniform and a discount cannot be rejected on the ground of being not uniform. In support of this contention, reliance is being placed on the judgment of the Apex Court in the case of Metal Box India Ltd, v. CCE, Madras (i) From the judgment of the Apex Court in the case of Indian Oxygen Ltd, it is clear that all costs, including loading charges at the place of removal are required to be included in the assessable value of excisable goods. In para 5 of the judgment, the Court ruled as under:- "It is clear from Section 4 that the delivery and collection charges have nothing to do with the manufacture as they are for delivery of the filled cylinders and collection of the empty cylinders. These charges have to be excluded from the assessable value. Insofar as the loading charges incurred for loading the goods within the factory are concerned, they are to be included in the assessable value, irrespective of who has paid for the same but the loading expenses incurred outside the factory gate are excludible. Duty of excise is a tax on the manufacture, not a tax on the profits made by a dealer on transportation".

The above ruling was rendered in the contest of assessable value being fixed at the price at the time of removal from the factory. In the present case, the place of removal has shifted to the depot in view of the amendment in 1996. Therefore, all costs, which were liable to be included earlier at the factory gate, become liable to be included at the depot. In view of this, we find no merit in the appellant's claim for the deductions of loading charges at the depot.

(ii) Exclusive Dealer Discount - Appellant sells its tyres to exclusive and other dealers. The special benefit available to exclusive dealers is to be found in the memo dated 1st Jan. 1998. We read that memo:- "The discount policy for Exclusive Dealer has been discussed and w.e.f. 1st January '98, following Discount will be payable to such Exclusive Dealers: EXCLUSIVE DEALER : Would mean a dealer who deals only in Modi Rubber Products and whose average offtake is minimum 20 tyres per month in a quarter.

(i) 0.6% of the total turnover in a quarter with a minimum sale of 20 truck tyres per mont. (ii) If he achieves a growth of 15% over his previous year average sale, he will be given additional exclusive discount of 0.4% of the turnover. The minimum sale should be 20 truck tyres per month.

The discount is to be allowed on quarterly basis and would be booked under the head Exclusive Discount in the books of Accounts.

If you require any other clarification, please get in touch with the undersigned".

It is to be seen that exclusive dealers become entitled to avail additional benefit for the reason that they were not selling tyres to other manufactures and they were to sell higher quantity. The learned Counsel for the appellant is right in his contention that uniformity is no criteria for determining the deductability of a discount. The Apex Court observed as under in the case of Metal Box India Ltd, with regard to uniformity of discount:- "13. Learned counsel for the appellant in this connection invited our attention to the decision of the Gujarat High Court in Gujarat State Fertilizers Co. Ltd, v. Union of India and Ors. - 1980 (6) Excise Law Times 397. The Division Bench of the Gujarat High Court consisting of P.D. Desai and G.T. Nanvati, JJ, interpreting the scope of Section 4 of the laid down that Section 4 of the Central Excise Act does not in terms enact the trade discount in order to qualify for deduction thereunder should be on a uniform basis to all wholesale purchasers at the factory gate. Any such view would require the addition of word 'uniform' before the 'trade discount' occurring in Section 4 which is not evidently permissible. Nor it would be advisable to read the requirement of uniformity even by implication. Even if trade discount is not uniformly given or is given at different rates to different purchasers, it cannot be itself disqualify if from being excluded for

arriving at the assessable value so long as the lack of uniformity is not founded on any extra commercial considerations. To ignore the deduction of trade discount would amount to adding a non-existent fraction to the manufacturing profit which will artificially inflate the net assessable value for the levy excise duty which is not legally permissible having regard to the basic concept of excise levy".

From the above ruling, it is clear that discount could not have been disallowed on the ground that it was not uniform. The assessee's appeal on this issue merits acceptance.

8. In the result, the appeal is partly allowed with consequential relief, if any, to the appellant.

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