

Collector of Central Excise Vs. Universal Luggage Mfg. Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-30-1988

Reported in : (1988)(18)LC466Tri(Delhi)

Judge : H Chander, J T P.C.

Appellant : Collector of Central Excise

Respondent : Universal Luggage Mfg. Co.

Judgement :

1. Brief facts so far as material to the disposal of the appeal are as follows : On 4th February, 1986, the Assistant Collector of Central Excise Satara by his adjudication order disallowed certain trade discounts and other deductions claimed by the respondent company herein from their price list for the purpose of determining the value under Section 4 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the said Act).

The respondent company thereafter filed an appeal before the Collector of Central Excise (Appeals), Bombay. The said Collector (Appeals) in paras 5 & 6 of his order has made certain observations which are in the nature of positive findings. For example in the said paras his observations are as follows : In the instant case, the break-up of the 11% trade discount allowed to buyers by the appellants consists of cash discount of 4%, Scheme discount of 4% and annual discount of 3%. All the three elements of discounts allowed by the appellants are normal trade discounts inasmuch as the same are allowed to the dealers in accordance with the

normal practice of the wholesale trade and the same are uniformly given all the buyers. In the circumstances I do not agree with the Assistant Collector's views that the scheme discount and the Annual discount are not in the nature of trade discount but the same relate to other considerations and hence not excludible from the Assessable value. I also do not agree with the Assistant Collector's view that the deductions claimed by the appellants on account of sales tax and surcharge are not admissible on the ground that the same are not paid presently and not paid periodically. In the present case the sales tax through not paid by the appellants immediately, the same is payable after 12 years from the due date as allowed to them by the Government. Hence, the deductions claimed on account of sales tax and surcharge are clearly admissible to them in terms of Section 4(4)(d)(ii) of the Central Excise and Salt Act, 1944.

Para 8 of the order-in-appeal passed by the said Collector (Appeals), being the last operative order, however, is as follows : In view of the foregoing circumstances, I set aside the impugned order of the Assistant Collector and remand the case back to the jurisdictional Assistant Collector for de novo decision and direct him to take into account all the facts of the case and also decide the case in the light of the guidelines in the above mentioned judgments. The appeal is accordingly disposed of.

Against the aforesaid order passed by the Collector (Appeals) the Collector of Central Excise, Pune has filed the instant appeal making the following prayers, namely : (1) The trade discount on account of (i) scheme discount and (ii) annual discount, may be held as non-admissible deduction from the assessable value.

(2) Deduction of actual octroi charges may be allowed and the impugned order be modified accordingly.

2. Raising the preliminary objection learned advocate for the respondents strongly asserts that the appeal filed by the department is incompetent and not maintainable. The impugned order remands the matter to the original authority and directs him to take into account all the facts of the case and also decide the case in the light of the guidelines in the above mentioned judgments. He states that this being the final order the Collector has filed only an appeal against one or two

purported findings of the lower appellate authority. These purported findings cannot even be called the findings in actual terms inasmuch as the operative part of the impugned order as set out above does not even direct the original authority to decide the case in de novo adjudication by taking into account his purported findings. These findings, therefore, according to the learned advocate Shri Harbans Singh, are merely in the nature of a few observations. The original authority has ultimately been directed to decide the case afresh in the light of some of the judgments mentioned in the impugned order. The appeal filed by the department does not contest the order of remand made by the appellate authority. It is only, at the risk of repetition, against certain observations of the lower appellate authority. Learned advocate in support of his plea relies on the decision of the Tribunal in the case of Emery (India) Pvt. Ltd., Jamnagar v. Collector of Central Excise, Bombay Tribunal Order No. 185/86-A dt. 11.3.1986 .

Learned advocate further points out that in view of the direction by the Collector (Appeals), Bombay in the impugned order the original authority has decided the case afresh, by his order dated 24th July, 1986 Against this order the Assistant Collector of Central Excise, Satara on orders of the Collector of Central Excise, Pune-the appellant herein-under Section 35E of the Act has made an application to the Collector (Appeals), Bombay against some of the discounts and other reductions allowed by his own impugned order dated 24th July, 1986.

Order on that application, to be treated as appeal by the Collector (Appeals) under Section 35E *ibid*, is still pending with the said Collector (Appeals).

In view of the aforesaid factual and legal position, learned advocate for the respondents urges that the instant appeal should be dismissed as not maintainable and incompetent.

3. Learned SDR, Shri S. Krishnamurthy has opposed contentions of the learned advocate for the respondents. According to him, the Collector (Appeals) has made certain findings in the impugned order and some of those findings are being challenged in the instant appeal. It is not unusual for an aggrieved person to challenge some findings in the impugned order to the competent appellate authority. Appeal, therefore, according to line learned SDR is maintainable.

On a careful consideration of the overall facts and circumstances of this case we observe that the impugned order is clearly an order of remand to the lower original authority and which has not been challenged in the instant appeal by the appellant-Collector. The operative part of the impugned order while giving direction to the lower authority to decide the case afresh in remand proceedings does not even refer to the so-called findings made in the impugned order.

The lower authority has been directed to decide the case in the light of guidelines in certain court judgments mentioned in the impugned order. We, therefore, agree with the learned advocate for the respondents that some of the observation made by the Collector (Appeals), which are sought to be challenged in the instant appeal now, cannot be considered as findings by the said Collector (Appeals) which would be open to challenge in any appeal before the next higher appellate authority. The further fact remains that remand proceedings were actually initiated by the Assistant Collector of Central Excise, Satara and the appeal against that order under Section 35E of the Act has already been filed by the department before the Collector (Appeals) who is seized of the matter now. Going into the merits of the issues at this stage by the Tribunal would nullify the appeal of the department before the Collector (Appeals). It would, therefore, be short-circuiting the appellate procedure laid down in the Act.

5. For the above reasons, we agree with the learned advocate for the respondents that the instant appeal is not maintainable and hence we dismiss it accordingly.

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