

CASE NO.:
Appeal (civil) 12009-12042 of 1995

PETITIONER:
ESCORTS LIMITED AND ANR.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, CHANDIGARH

DATE OF JUDGMENT: 12/03/2003

BENCH:
SYED SHAH MOHAMMED QUADRI & ASHOK BHAN

JUDGMENT:
JUDGMENT

2003 (2) SCR 1052

The following Order of the Court was delivered :

SYED SHAH MOHAMMED QUADRI. J. These appeals, by the assessees [M/s. Escorts Limited and M/s. Goetze (India) Limited], are from the order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. 421-454 of 1993 dated August 30, 1993.

The short point that arises for consideration is: whether the differential discount between stockists discount and sub-stockists discount passed on to the stockists by the assessee, is deductible in assessing the excisable value of the goods sold to the sub stockist?

The assessees manufacture parts and accessories of motor vehicles, tractors, trailers and other stationary/diesel engines. The goods in question are tractors. During the relevant period, out of the tractors manufactured by the assessees, sixty per cent were sold to their stockists at 27.5 per cent discount and forty per cent were sold to their sub-stockists at twenty five per-cent discount. The differential discount of 2.5 per cent, was passed on to the stockists by the assessees. It is the deductibility of that amount, in arriving at the excisable value of the tractors sold to the sub-stockists, that is in question in these appeals. The Assistant Collector, Central Excise, initiated the proceedings by issuing a show-cause notice as to why the differential discount should not be "disallowed. He eventually disallowed deduction of the differential discount. On appeal, by the assessees, the Collector (Appeals) in some cases took the view that the differential discount was an allowable deduction but in other appeals, he came to a different conclusion. Against those order, both the assessees as well as the Revenue filed appeals before the Customs, Excise and Gold (Control) Appellate Tribunal [for short, 'the Tribunal']. By the orders impugned in these appeals, the Tribunal upheld the orders of the Collector (Appeals) declining to permit deduction of the differential discount and set aside the orders of the Collector (Appeals) permitting the deduction of the differential discount. Thus, the assessees are in appeal before this Court.

For levying excise duty, the valuation of goods is made in accordance with the principle contained in Section 4 of the Central Excise Act, 1944, which insofar as it is relevant for our purposes, reads as follows:

"Section 4 - Valuation of excisable goods for purpose of charging of duty of excise - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be-

(a) the normal price thereof that is to say the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale

trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for that sale:

XXX
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(d) 'value', in relation to any excisable goods, -

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation- In this sub-clause, 'packing' means the wrapper, container, bobbin, pirn, spool, reel or wrap beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale"

From a perusal of the aforementioned section, it is clear that where the excise duty is chargeable on excisable goods with reference to value, the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, is deemed as excisable value of goods, where the buyer is not a related person and the price is the sole consideration for sale. Admittedly, in this case neither the stockists nor the sub-stockists are treated as related persons. It is also the common ground that the price is the sole consideration for sale of the goods. Inasmuch as in the course of wholesale trade the assessee sold tractors to the stockists, at the time and place of removal allowing discount of 27.5 per cent on the cost shown in the price list, therefore, the normal price of tractor shall be the cost in the price list less discount (27.5 per cent) in the case of the stockists. In relation to the sub-stockists, the tractors were sold at twenty five per cent discount on the cost shown in the price list, therefore, their normal price of tractors will be the cost shown in the price list minus twenty five per cent discount.

However Mr. A.R. Madhav Rao, learned counsel appearing for the assessee, invited our attention to the definition of the term 'value' in clause (d) of sub-section (4), referred to above and argued that as the assessee was passing on the differential discount to the area stockists the same ought to be deducted as part of trade discount under sub-clause (ii) of clause (d).

That sub-clause provides that value, in relation to any excisable goods, does not include the amount of duty of excise, sales tax and other taxes, if any, payable on such goods and subject to such rules, as may be made, the trade discount allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale. We have already indicated above that the permissible deduction under the said clause in respect of the stockists is 27.5 per cent and that was allowed as deduction in their case. In respect of sub-stockists, as twenty five per cent discount was given to them, it was accepted as deductible in arriving at the normal price of tractors. The differential discount of 2.5 per cent passed on to the area stockists by the assessee was rightly disregarded as it is not and it cannot be treated as a discount given to the sub-stockists and it has never been the case of the assessee also. It cannot also be treated as discount given to the area stockists though it was passed on to them because it does not relate to tractors sold to them but relates to the tractors sold to the sub-

stockists.

The next submission of Mr. A.R. Madhav Rao that the sub-stockists were nominated at the behest of the stockists and, therefore, the differential discount shall be treated as discount to the stockists and the sale to the sub-stockists shall be treated as sale to the stockists, cannot be accepted as from the facts indicated above, it is evident that the stockists and the sub-stockists are two different categories of the wholesale purchasers. It is not a case of sale of all tractors to the stockists and the despatch of forty per cent of tractors to the sub-stockists at the instance of the stockists. For all purposes the sale of tractors to the sub-stockists is separate and independent of sale to the stockists.

From the contentions raised before the Tribunal, it appears to have been urged for the assessee that the differential between the higher discount to their stockists and the lower discount to the sub-stockists was passed on to the stockists as commission. If that be the plea, even otherwise, the differential discount cannot be accepted for the purpose of sub-clause (ii) as a permissible deduction. [See: Seshasavee Paper and Boards Limited v. Collector of Central Excise, (47 E.L.T.202)]

For the aforementioned reason, the differential discount has rightly been disallowed as deduction by the tribunal in computing the excisable value of the tractors sold by the assessee to the sub-stockists. The appeals fail and they are accordingly dismissed with costs.