IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/106/2005

(Arising out of Order-in-Appeal No. 227/05-CE dated 11.8.2005 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

Commissioner of Central Excise, Coimbatore   Appellant

Vs.

M/s. Texmo Industries   Respondent
(Motor Division)

Appearance

Shri K.P. Muralidharan, AC (AR) for the Appellant
Shri C.R. Raghavendra, Advocate for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **15.05.2017**

Final Order No. 40733/2017

Per Madhu Mohan Damodhar

The respondents are manufacturers of electric motor and mono block pumps who removed the final products through their branches to the dealers ~~of~~ on payment of Central Excise duty. From the list price, they deducted the discount actually allowed as also the discount they actually proposed to extend at the end of the year. Further, they also raised commercial invoices from the branches to the dealer. On verification of both the invoices it appeared to the Department that they had collected 5% of the list price over and above the value declared in the Central Excise invoice. It was alleged that the said difference thereof relating to 5% of commercial invoice was required to be allowed in the transaction value for payment in terms of section 4(3)(d) of the Central Excise Act. Two show cause notices dated 8.4.2003 and 8.4.2004 were issued to the respondent, inter alia, proposing to demand differential duty of Rs.14,71,400/- and Rs.22,45,947/- respectively. The original authority dropped further proceedings by holding that the assessee actually passed on 5% annual discount to the dealers at the end of every year/month and the same was not retained by them and further held that any discount by whatever name when actually passed on to the buyers was eligible for deduction from the list price for arriving at the assessable value. Aggrieved, the department is before this forum.

2. Today, when the matter came up for hearing, learned AR, on behalf of the Department, reiterated the grounds of appeal and in particular pointed out that the actual commercial invoice indicated higher price than that indicated as assessable value in the Central Excise invoice. He submits that credit notes were issued only subsequently after issue of commercial invoice.

3. On the other hand, learned Advocate Shri C.R. Raghavendra for the respondent, submits that in identical matter, in their own case, in respect of Pump Division, this Tribunal reported in 2008 (226) ELT 375 (Tri. Chennai) had held in favour of them.

4. We have heard both sides and gone through the facts.

5. As submitted by learned Advocate, the very same issue has been decided by this Tribunal in their own case cited supra. The relevant portion of the case law of the said decision are quoted herein:-

> *"5. The ld. Counsel for the respondents has relied on the decision of the Tribunal in Mahavir Spinning Mills Ltd. v. CCE, reported in 2007 (207) E.L.T. 94 (Tri.-Del.) and Maruti Udyog Ltd. v. CCE, Delhi reported in 2004 (170) E.L.T. 245 (Tri.-Del.). In the Mahavir Spinning Mills case, the Tribunal decided that additional discount passed through credit note was admissible. In the said case, the Tribunal found that varying discounts were granted to different classes of buyers on commercial basis and the discount was not refundable on any account. It was well-settled that time of granting discount was not relevant for the purpose of determining whether the discount was to be allowed for the purpose of deduction.*
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> *6. In the Maruti Udyog Ltd. case (supra), it was decided that pre-delivery inspection and after sales service charges received by dealers from buyers of cars not being payable to or on behalf of manufacturer was not includible in assessable value of cars. It was decided that the post delivery inspection and after sales service did not need to form part of the assessable value of the automobiles while discharging Central Excise duty. The ld. Counsel submitted that even if the impugned charges related to after sales service, the same was not required to be included in the assessable value.*
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> *7. We have carefully considered the facts of the case. In the Bombay Tyres International, dated 14/15 Nov., 1983) [1984 (17) E.L.T. 329 (S.C.)] case, the Hon'ble Apex Court decided that the discount granted to buyer of*

excisable goods described by whatever name was not to be included in the assessable value provided that the discount was known at or prior to removal of the goods on sale . Such discount was not to be disallowed only because they were not payable at the time of each invoice or deducted from the invoice. In the instant case, the revenue has not adduced any evidence to establish that the discount in question was not passed on to the dealers of the respondent and was retained by the respondent. There is no evidence also to show that the impugned amount represented compensation for after sales service incurred by the dealers on behalf of Texmo Industries in which case it could be argued that it constituted additional consideration includible in the assessable value, in the circumstances, we find that the discount given was a purely commercial one and admissible for deduction from the list price in determining the assessable value. Accordingly, we uphold the impugned order and reject the revenue's appeal as devoid of merit."

6. We find that the case of Commissioner of Central Excise Vs. Mahavir Spinning Mills Ltd. relied upon in the earlier Tribunal's decision has been affirmed by the Hon'ble Supreme Court as reported in 2007 (212) ELT A152 (SC). In the event, we do not find any merit in the appeal filed by the Department and hence the orders passed by both the authorities below are upheld and the appeal is dismissed.

(Dictated and pronounced in open court)

Sulekha Beevi

(MADHU MOHAN DAMODHAR)	**(SULEKHA BEEVI C.S.)**
Member (Technical)	Member (Judicial)

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