

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E 3348 2004

Date 18.07.2008

Assistant Registrar
C.E.S.T.A.T., New Delhi

To
C.C.E. NOIDA

THE COMMISSIONER OF CENTRAL EXCISE, B-123,
SECTOR-5, NOIDA
C.C.E. NOIDA

M/S HONDA SIEL CARS (I) LTD

Appellant

Vs
Respondent

Excise dated 17-7-08

I am directed to transmit herewith a certified copy of **Final order No. 487/2008-**
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent

M/S HONDA SIEL CARS (I) LTD.

M/S HONDA SIEL CARS (I) LTD., A-1 SE-40 & 41, GRATER NOIDA

2. Adv. Consult **SH. S. K. PAHWA, ADV.,**
45, ARADHANA SECTOR-13,
R. K. PURAM, N. DELHI-66

3. **SDR.**

~~1. IODR.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017

7. M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar. (U.P.)

9. Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT. U.P

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No. 70 (Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

13. Taxindiaonline.com Pvt Ltd, B-XI 8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi-110066

Court No.III

Date of hearing: 15.7.2008

Central Excise Appeal No.3348 of 2004

Arising out of the Order in appeal No.119/CE/APPL/NOIDA/04 dated 31.3.04 passed by the Commissioner (Appeals), Customs & Central Excise, NOIDA.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant

Respondents

C.C.E., Noida

vs.

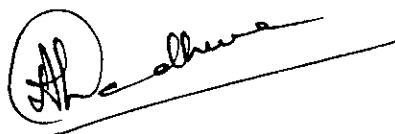
M/s Honda Siel Cars (I)
Ltd.

Appearance:

Shri Sanjay Kumar, Authorized Departmental Representative (DR) for the Revenue and Shri S.K. Pahwa, Advocate for the respondent(s)

Coram: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

FINAL Order No. 4 87 / 08 - Ex



Per Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has preferred the present appeal. We have heard Shri Sanjay Kumar, learned DR appearing for the Revenue and Shri S.K. Pahwa, learned Advocate appearing for the respondent(s).

2. After hearing both the sides, we find that there is no dispute about the legal issue that the quantity discount offered by the respondents to their dealers are admissible deductions inasmuch as, the scheme for discount was floated at the start of the year and assessments were made provisional, though the discounts were made by way of credit notes or cash subsequently. We find that the Commissioner (Appeals) has held in favour of the assessee on the above ground. However, the Revenue's grievance is as regards the factual figures of discounts offered to the dealers. For better appreciation, we reproduce the relevant part of the order of the Assistant Commissioner:

"On perusal of this chart it is clear that at the end of the scheme a total of Rs.1,10,51,200/- worth of discount was to be given to the party's dealers and against a total discount of Rs.86,31,511/- has already been allowed to the party on invoices & the party has subsequently allowed a discount of Rs.26,92,276/- to the party through cheques. So, a total discount of Rs.1,13,23,787/- has been allowed by the party to their dealers.

From above, I find that the party has claimed discounts worth Rs.86,31,511/- on their invoices and in juxtaposition to this the actual amount of discount as allowed to the dealers is Rs.1,13,23,787/-. So it is clear that the party has passed on discounts in excess of the discounts as were allowable & as such the party has paid discounts in excess amounting to Rs.2,72,587/- and on this amount Central Excise duty with the following details -

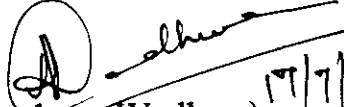
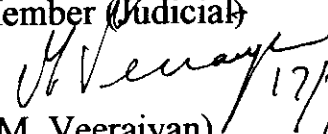
- | | | |
|---|---|---------------|
| (a) Amount of discount passed on in excess | - | Rs.2,72,587/- |
| (b) Central Excise duty payable (BED + SED) | - | Rs.1,09,172/- |
| @ 40% - Rs.1,09,035/- + CESS - Rs.137/-) | | |



3. Commissioner (Appeals) has decided the issue only on legal point without taking into account the factual figures of discount offered to the customers. Learned Advocate for the respondents has contended that on the contrary, they have paid excess duty, inasmuch as the excess discounts offered by them to their dealers were not deducted from the assessable value. As the dispute is as regards the factual figures which could be verified at the level of the original adjudicating authority, we set aside the impugned order and remand the matter to the Assistant Commissioner for verification of the discount figures actually offered to the customers and finalize the assessments accordingly. Needless to say that the respondents would be granted an opportunity to put forth their case before the original adjudicating authority.

4. Appeal of the Revenue is allowed by way of remand.

(The operative part of the order was pronounced in the open Court)


 (Archana Wadhwa)
 Member (Judicial) 17/7/08

 (M. Veeraiyan) 17/7/08
 Member (Technical)

scd/