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

Appeal No. : E/1834/2005-EX[DB]

Dated: **05/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
VARDHMAN SPINNING & GENERAL MILLS (A UNIT OF MAHAVIR SPINNING MILLS LTD.)
Chandigarh Road, Ludhiana

VARDHMAN SPINNING & GENERAL MILLS (A UNIT OF MAHAVIR SPINNING MILLS LTD.) (Appellant)

VS

C.C.E. LUDHIANA (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/745/2012-EX[DB]** dated **03/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. LUDHIANA
Central Excise House, 'F' Block, rishi Nagar, Ludhiana 141001 (Punjab)

2. Advocate(s) / Consultant(s): SH. KUPINDER SINGH, C-5/9, SAFDARJUNG DEVELOPMENT AREA, N. DELHI

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

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

COURT-I

Date of hearing: 22.05.2012
Date of decision: 3.7.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No. 1834 of 2005

(Arising out of order-in- No. 74/CE-Appeal/Ldh/05 dated 9.3.2005 passed by the Commissioner of Customs & Central Excise,).

M/s Vardhman Spinning & General Mills Appellants

Vs.

CCE, Ludhiana Respondent

Present Shri Rupinder Singh, Advocate for the appellant.
Present Sh. S.R. Meena, AR for the respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/745/2012-Ex(BR)

Per. Rakesh Kumar:

The facts leading to this appeal are in brief as under:-

1.1 The Appellant manufacture cotton and acrylic yarn chargeable to central excise duty under chapter 52 and 55 of the Central Excise Tariff Act. In course of scrutiny of their central excise records for 1999-2000 and 2000-2001, it was found that the Appellant had a system of giving trade discounts. The discounts were shown in the invoices and were deducted from the assessable value. However, these discounts were not given at the time of clearance and instead the same were passed on to the customers later on in the form of credit notes. According to the Department, in terms of the provisions of Section 4, the deduction of only those trade discounts is permissible which are known at the time of clearance and are passed on to customer at that time. According to the department, there is no evidence that the discounts whose deduction was claimed, had been passed on to the customers at the time of clearances. On this basis, a show cause notice dated 22.01.2004 was issued to the Appellant for:-

(a) disallowing the deduction of the trade discount in question, and on this basis, recovery of allegedly short paid duty amounting Rs. 3,64,863/- alongwith interest from the Appellant under Section 11A(1) read with Section 11AB of the Central Excise Act, 1944; and

(b) imposition of penalty on the Appellant under Section 11AC ibid.

1.2 The above show cause notice was adjudicated by the Assistant Commissioner vide order-in-original dated 21.4.2004 by which the duty demand, as made in the show cause notice was confirmed and penalty of equal amount was imposed on the Appellant. The Assistant Commissioner in this order held that no evidence of the discounts, whose deduction has been claimed, having been passed on to the customers, has been furnished and in this regard, the credit notes issued by the Appellant to their customers is not sufficient evidence.

1.3 The above order passed by the Assistant Commissioner was upheld by CCE (Appeals) vide order-in-appeal No. 74/CE/Appeal/Ldh/05 dated 21.2.2005. The CCE (Appeals) also held that though the discounts were shown in the invoices, but the same were not passed on to the buyers at the time of clearance and full price was charged from the buyers and that the Appellant have not submitted the invoices in support of their claim, that the discounts had actually been passed on to the buyers.

1.4 Against the above order of CCE (Appeals), this appeal has been filed.

2. Heard both the sides.

3. Shri Rupinder Singh, Advocate, the learned Counsel for the Appellant, assailing the impugned order pleaded that the Appellant given various trade discounts like cash discount, quantity discounts etc to their customers, that the discounts were known at the time of clearance and the same are mentioned in the invoices, that while the duty was paid at the discounted price, in some cases, the discounts were passed on to the customers subsequently by issue of credit notes, that in there cases only, the

department is denying the deduction of discounts, that para 2 of the show cause notice itself states that the discounts while not been given at the time of clearance, were being passed on to the customers, later on in the form of credit notes, that the Department does not question the genuineness of the credit notes, that when the nature of the discounts was known at the time of clearance and the same had been passed on to the customers, there is no justification disallowing then deduction from the assessable value, that in terms of Apex Court's judgement in the case of **UOI vs Bombay Tyre International Ltd. reported in 1984 (17) ELT 329 (SC)** the deduction of trade discount is to be permitted if the same are given under the terms of the sale or by established practice and the nature of the discounts is known at or prior to removal of the goods and such discounts are not to be disallowed only because the same are not payable at the time of each invoice or deducted from invoice price, that the ground for disallowing the deduction of trade discount as mentioned in para 4 of the show cause notice "noticee have not produced any evidence which could establish that the discounts availed from the assessable value have been paid to the customer at the time of clearance", is contrary to the law laid down by the Apex Court in case of **UOI vs. Bombay Tyre International** (supra), that the finding in the impugned order that the Appellant have not passed on the discounts is factually incorrect and contrary to what has been stated in para 2 of the show cause notice, that extended limitation period under provision of Section 11A(1) is not applicable, as the Department was fully aware of the practice being followed by the Appellant, and that the impugned order is, therefore, incorrect and not sustainable.

4. Shri S.R. Meena, the learned Senior DR defended the impugned order and reiterating the findings of CCE (Appeals) in the impugned order, emphasized that the Appellant have paid duty on the discounted price, they have not produced any evidence to show that the discounts had been passed on to the buyers and that the deduction of discount is not admissible and the same were not passed on at the time of sale.

5. We have carefully considered the submissions from both the sides and perused the records. The dispute in this case is about admissibility of trade discounts- cash discount and quantity discounts. In this regard, the allegation against the Appellant, as contained in the para 2, 4 & 5 of the show cause notice are as under:-

> **"2. During the scrutiny of the invoice it was observed that the party has a system of giving trade discounts. These discounts were shown on the invoices and were deducted from the assessable value. However, these discounts were not given at the time of clearance- instead these were passed on to the customers later on in form of credit notes. However, the Section 4(d)(ii) of the Central Excise Act, 1944 envisages that deduction of only those discounts, which are known at the time of clearance and one actually passed on to the customers, are admissible".**
>
> **"4. The noticee were requested by the jurisdictional range office to submit evidence that the discounts were passed on at the time of clearance, but the noticee have not produced any evidence which could establish that the discounts availed from assessable value have been passed on to the customers, at the time of clearance".**
>
> **"5. Therefore it appears that the discounts availed by the noticee as the invoices are not admissible in terms of section 4 (d)(ii) of the Central Excise Act, 1944. For this the noticee have not submitted the**

copies of invoices to the Department and has thus suppressed the material information from the Department".

5.1 Thus, the show cause notice alleges that in some cases while the deduction of trade discounts from the assessable value was claimed, the discount was not passed on at the time of clearance but was passed on later on by issuance of credit notes and, therefore, the deduction of such trade discount is not admissible as for admissibility, the same should have been passed on to the customers at the time of clearance, not later on.

6. When the show cause notice itself states that in the cases where the deduction of trade discount is sought to be disallowed, the discounts were passed on later on by issue of credit notes to the buyers and there is no allegation that the credit notes are bogus, it has to be accepted that the trade discounts were passed on to the buyers but not at the time of removal. According to Department, for a trade discount to be admissible for deduction, not only it should be known prior to or at the time of clearance but must also be passed on to buyer at the time of clearance. In our view, this contention of the Department is contrary to the law laid down by the **Apex Court in case of UOI vs. Bombay Tyre International Ltd. (supra)** wherein para 1 of the judgement the Hon'ble Court has held thus:-

> ***Trade Discounts.*** **- Discounts allowed in the Trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such Trade Discounts shall not be**

disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.

7. Therefore, for permitting the deduction of trade discount, what is material is that it should be known and clearly understood prior to or at the time of removal and it is not necessary that it should be quantified and given to the buyer only at the time of removal. The Commissioner (Appeals), in the impugned order has observed that- "In the instant case, the dispute is not regarding admissibility of discounts but regarding payment of duty on the price charged by the Appellant at the time of clearance of the goods." Thus the Department's contention is that while the trade discounts claimed are admissible, ~~that~~ the deduction from assessable value is not permissible, as the ~~same~~ discounts were not passed on to buyers at the time of clearance but later on by issue of credit notes. This view of the Department, as discussed above, is contrary to the judgement of the Apex Court in the case of UOI vs. Bombay Tyre International (supra).

8. In view of the above discussion, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Ckp