Customs, Excise and Gold Tribunal - Tamil Nadu
Commissioner Of C. Ex. vs Nilkamal Plastics Ltd. on 21 May, 2004
Equivalent citations: 2004 (172) ELT 83 Tri Chennai
Bench: R K Jeet
ORDER Jeet Ram Kait, Member (T)

1. The Revenue by this appeal challenges the Order-in-Appeal No. 445/2003/Pondicherry, dated 13-8-2003 passed by the Commissioner of Central Excise (Appeals), Chennai by which the Commissioner has allowed the appeal filed by the assessee-respondents against the order in original passed by the Assistant Commissioner/ Pondicherry.

2. Brief facts of the case are that M/s. Nilkamal Plastics, Pondicherry, the respondents herein are engaged in the manufacture of Plastic moulded furniture falling under chapter sub-heading 9401.00, 9403.00 and Plastic crates falling under chapter sub-heading 3923.90 of the CETA, 1985. As a uniform industry practice the entire Plastic Chair Manufacturing industry had decided not to accept the rejected goods if any returned by their buyers. It was also decided to increase the discount allowed to the customers by 1% to 2% at the time of clearance of the goods irrespective of the level of rejection. The said discount was given as an additional discount and the assessee-respondents declared the same in the declaration filed under Rule 173C(3A) clearly indicating that the said additional trade discount is in lieu of accepting any rejection back from the customers. It was in these circumstances that show cause notice was issued by the Assistant Commissioner proposing to disallow the additional trade discount alleging that the said discount is to compensate the customer for the damages suffered after the goods were cleared to them and in terms of the judgments of the Hon'ble Apex Court in the case of CCE v. Vikram Detergent Ltd. reported in 2001 (127) E.L.T. 641 (S.C.) damage discount is not allowable and the show cause notice culminated in the order of adjudication passed by the Assistant Commissioner confirming a differential demand of duty of Rs. 2/376,963/- and imposing penalty of Rs. 60,000/- on the respondents apart from demanding interest under Section 11AA and Section 11AB of the Act. Aggrieved by the said order, the respondents moved the Commissioner (Appeals) who by the impugned order, set aside the order of the Assistant Commissioner. Hence this appeal by the Revenue.

3. Shri A. Jayachandran, learned JDR for the appellant-Revenue referred to the grounds of appeal and submitted that in the instant case the additional discount of 1 to 2% is given to the customers on condition that no claim towards damages be claimed by the customers irrespective of the extent of rejection. Therefore, the said discount is similar to the discount passed on towards damages. He has also invited my attention to the judgment of the Hon'ble Apex Court in the case of CCE v. Hindustan lever Ltd. reported in 2001 (130) E.L.T. 721 (S.C.) wherein it was held that discount on account of damages are not allowable. The said judgment has relied upon the earlier judgments of the Apex Court in the case of Assistant Commissioner v. MRF Ltd. reported in 1987 (27) E.L.T. 553, CCE v. Vikram Detergent reported in 2001 (127) E.L.T. 641 (S.C.) and Govt. of India v. MRF reported in 1995 (77) E.L.T. 433 (S.C.). The Commissioner (Appeals), in the present case has overlooked the decisions of the Hon'ble Supreme Court cited supra, argued the learned JDR. He, therefore, prayed for allowing the Revenue appeal.

4. Heard Shri Nitin Mehta, learned Counsel for the respondents. He has submitted that the lower appellate authority has passed a well reasoned order and the same needs to be sustained.

5. I have considered the submissions made by both the sides. The only issue that arises for my determination in the instant case is whether the additional discount ranging from 1 to 2% allowed by the assessee to their customers at the time of clearance of the goods for not accepting any claim on damaged goods, if any, is includible in the assessable value or not. The Revenue is of the view that since the said additional discount is given in lieu of damaged goods, in terms of the judgment of the Hon'ble Apex Court in the case of CCE, Meerut v. Hindustan Lever Ltd. reported in 2001 (130) E.L.T. 721 (S.C.), the discount is not allowable and will form part of the assessable value, I have perused the cited judgment. The Hon'ble Apex Court in the cited judgment while holding that discount on damages is not admissible, has relied upon their earlier judgments of the Apex Court in the case of Madras Rubber Factory reported in 1987 (27) E.L.T. 553 (S.C.) and also the judgment in the case of Vikram Detergent Ltd. reported in 2001 (127) E.L.T. 641. I note that, in the case of Madras Rubber Factory (supra) the Hon'ble Apex Court noted that instead of refunding the money in cash, for the damaged tyre already purchased by the customers, the assessee replaced the old tyre with a new tyre. In other words, the assessee took back the defective tyre sold earlier and supplied new tyre and from the price of the new tyre, the amount which has been found remittable to the customer is deducted and the asssessee collected only the balance price. It was in those circumstances, Hon'ble Supreme Court has noted that the damage discount was only a claim for refund by the buyer for the manufacturing defect in the tyre sold by the assessee, which was being honoured by the assessee in a manner acceptable to both the parties and the Court held that the nature and the character of the amount so being refunded was certainly not a trade discount contemplated by Section 4(4)(d)(ii) of the C.E. Act, 1944. In the case of CCE v. Vikram Detergent Ltd. reported in 2001 (127) E.L.T. 641 (S.C.), the Hon'ble Apex Court has held that ".....It is in the nature of a benefit given to the customers by way of compensation for the loss suffered by them in the previous sale.....a compensation in the nature or warranty allowance on a defective tyre".

6. It would thus be seen that in both the above rulings of the Supreme Court, the Court was dealing with a situation pertaining to previous transactions where discount was allowed for the defective tyres already returned. In the present case the situation is not so. In the present case, the additional discount of 1 to 2% is given at the time of sale of the goods itself for not accepting any return of the defective goods if any at a later date, without any regard to the nature of the defect, the quantum of goods returned, date of return etc. Further, I note that the lower appellate authority in the impugned order on Page No. 3 (para not given), has noted that the Supreme Court judgment in the case of Vikram Detergent Ltd., was rendered in relation to the provisions of old Section 4 of the Act whereas the period covered by the present case pertains to the period after introduction of the valuation system based on Transaction value method. He has further noted that under the Transaction value method, all types of discounts are allowed based on each transaction, including damage discount and is admissible as deductions without any restrictions. He has also noted that CBEC vide Circular No. F. No. 354/81/2000-TRU, dated 30-6-2000 has issued clarifications on "Transaction value" wherein in Para 9, it is clarified as under :

"As regards the discounts, the definition of transaction value does not make any direct reference. In fact, it is not needed by virtue of any fact that the duty is chargeable on the net price paid or payable. Thus if in any transaction a discount is allowed on a declared price of any goods and actually passed on to the buyer of the goods as per common practice, the question of including the amount of discount in the transaction value does not arise. Discount of any type or description given on any normal price payable for any transaction will, therefore, not form part of the transaction value of the goods. What is important is that it must be established that the discount for a given transaction has actually been passed on to the buyer of the goods. The differential discounts extended as per commercial considerations on different transactions to unrelated buyers if extended cannot be objected to and different actual prices paid or payable for various transactions are to be accepted for working assessable value".

6.1. It is clear from the above clarification that discount of any type or description given on any normal price payable for any transaction will, therefore, not form part of the transaction value of the goods.

7. It is settled law by the Hon'ble Supreme Court as in the case of CC, Calcutta v. IOC ltd. reported in 2004 (165) E.L.T. 257 (S.C) that clarifications issued by the Department are binding on the departmental authorities though it is not binding on a Court or an assessee, and the Revenue cannot raise a contention contrary to the binding circular issued by the Board. In view of my discussion above and in view of the clarification issued by the Board, as noted above, I am of the considered opinion that no interference is called for in the order of the lower appellate authority and I uphold the same and reject the Revenue appeal.

8. The operative portion of this order rejecting the Revenue appeal was pronounced in the open Court on 21-5-2004.