2012 (2) ECS (43) (Tri-Del)

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

COURT NO.1

M/s Century Laminating Company Ltd.
Versus
Commissioner of Central Excise, Meerut-II

Excise Appeal no. 986 of 2005 and Appeal No. 960 of 2005

[Arising out of the Order-in-Appeal No. 315-CE/MRT-II/2004 dated 13/12/2004 passed by The Commissioner (Appeals), Customs and Central Excise, Meerut - II]

M/s Century Laminating Company Ltd. — Appellant
Versus
CCE, Meerut-II — Respondent

And vice-versa

Appearance:
Shri C. Harishankar, Advocate – for the appellant.
Shri Bharat Bhushan, Authorized Representative (DR) – for the Respondent.

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

Date of Hearing: 19.06.2012.
Date of Decision:16.10.2012**.**

FINAL ORDER NO. A/1228-1229/12 – EX-BR dated 16.10.2012

"Deduction of damage discount being in the nature of refund or benefit to the buyer by the way of compensation for damage, breakage or loss suffered by the goods after removal from the factory, is not permissible." [Para 6]

" In our view the Commissioner (Appeals) has gone wrong in permitting the deductions of these special discounts, as it is not known as to on the basis of which criteria those buyers had been treated as a different class of buyers. In view of this, the Commissioner (Appeals)'s order permitting deduction of special discount under the "rebate and similar claims" head is not sustainable and is liable to be set aside." [Para 7]

Per Rakesh Kumar: -

1. M/s Century Laminating Company Ltd. Village Achheja, Delhi Road, Hapur, Distt. – Ghaziabad [hereinafter referred to as appellant] manufacture laminated sheets of different shapes and designs which are chargeable to Central Excise duty under sub-heading 4803.90 of the Central Excise Tariff. The period of dispute in this case is from October 1996 to June 2000. During this period, the assessments were provisional, which were subsequently finalized by the Assistant Commissioner. The appellant had claimed various discounts under the head namely " cash discount", "special discount", "additional discount", "quantity discount", "discount through credit notes", "insurance premium", "turnover tax", "loading/unloading charges", "packing and forwarding charges", "octroi" and "rebate and similar claims". When the assessment was finalized by Assistant Commissioner vide order-in-original dated 12.5.03, he disallowed – "discount through credit notes" which was nothing but discount for goods damaged during transit, "insurance premium", "packing and forwarding charges" and "rebate and similar claims". On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 31.12.04 allowed the two discounts – "discount through credit notes" (damage discount) and "rebate and similar claims" but disallowed the claim for other two deductions. The department has filed the appeal No. E/960/2005 against the Commissioner (Appeals)'s order permitting the deduction of the two discounts. The appellant have filed appeal No. E/986/2005 against the order of Commissioner (Appeals) disallowing the deduction of "insurance premium" and "packing and forwarding charges".

2. Heard both the sides.

3. Shri C. Harishankar, Advocate, the learned Counsel for the appellant, pleaded that the appellant's sales were through depots, that the "discount through credit notes" is in fact discount for damage of the goods during transit after sale from depots, that this discount has been correctly allowed by the Commissioner (Appeals), that "rebate and other claims" are post sale discounts which also have been correctly allowed by the Commissioner (Appeals), as such discount had actually been passed on to the customers, that deduction of "insurance premium" has been incorrectly disallowed by the Commissioner (Appeals) in view of the Apex Court's judgment in the case of Escorts JCB Ltd. vs. CCE, Delhi –II reported in 2002 (146) E.L.T. 31 (S.C.) and Prabhat Zarda Factory Ltd. vs. CCE reported in 2002 (146) E.L.T.A. 497 (S.C.), wherein it has been clearly held that the insurance till the buyers premise cannot be included in the assessable value whether ex-factory or ex-depot, and that the deduction of "packing and forwarding charges" has been wrongly disallowed by the Commissioner (Appeals), a major quantity of the laminated sheets manufactured by the appellant is sold in loose condition without any packing and that packing in the cardboard boxes is done only in rare cases where the goods are sold to outstation buyers or exported. He, therefore, pleaded that the impugned order disallowing the deduction on account of "insurance premium" during transit of the goods and "packing and forwarding charges" is not correct and so far as the part of the impugned order allowing the deduction on account of

damage to the goods during transit and "rebate and other similar claims" is concerned, there is no infirmity in the same.

4. Shri Bharat Bhushan, the learned Departmental Representative, assailed the impugned order permitting deduction on account of "discount through credit notes" and "rebate and other claims" pleading that the "discount through credit notes" is nothing but the discount given to the buyers on account of damage occurred during transportation of the goods after sales ex-depot, that according to the judgment of the Apex Court in the case of CCE, New Delhi vs. Vikram Detergent Ltd. reported in 2001 (127) E.LT. 641 (S.C.), such discount is not admissible and the same has been wrongly allowed by the Commissioner (Appeals), that the "rebate and other claim" are nothing but post sale discounts to some buyers which are not known prior to the removal of the goods and, hence, permitting their deduction is contrary to the law laid down by the Apex Court in the case of Union of India vs. Bombay Tyre International Ltd. reported in 1983 (14) E.L.T 1896 (S.C.), that the ratio of Apex Court judgement in the case of Metal Box India Ltd. vs. CCE, Madras reported in 1995 (75) E.L.T. 449 (S.C.) has been wrongly applied by the Commissioner (Appeals) in permitting the deduction of this discount, that as regards deduction of transit insurance, since the appellant's sales are from the depots, it is the depot which has to be treated as place of removal and, therefore, the deduction of transit insurance in respect of transit upto depot would not be admissible and that as regards the packing and forwarding charges, the same are essentially charges for packing and the same would be includible in the assessable value in terms of the judgement of the Apex Court in the case of Royal Enfield vs. CCE, Chennai reported in 2011 (270) E.L.T. 637 (S.C). He, therefore, pleaded that deduction of insurance premium and packing and forwarding charges has been correctly disallowed and that the Commissioner (Appeals)'s order permitting the deduction of damage discount and discount under the head "rebate and other claims" is incorrect.

5. We have carefully considered the submissions from both the sides and perused the records.

6. As regards the discount through credit notes, there is no dispute that this discount is for damage of the goods during transit after ex-depot sale. In terms of judgments of the Apex Court in the case of CCE, New Delhi vs. Vikram Detergent Ltd. (supra), the deduction of damage discount being in the nature of refund or benefit to the buyer by the way of compensation for damage, breakage or loss suffered by the goods after removal from the factory, is not permissible. In view of this, Commissioner (Appeals)'s order permitting the deduction of the damage discount is incorrect is liable to be set aside.

7. As regards, the Commissioner (Appeals)'s order permitting deduction of "rebate and similar claims", these discounts are post sales discounts offered to some special buyers. Commissioner (Appeals) in the impugned order applying the judgement of the Apex Court in the case of Metal Box India Ltd. vs. CCE, Madras (supra) has allowed this discount on the ground that in terms of the judgement of the Apex Court, an assessee in terms of the provisions of Section 4, as the same stood during the period prior to 1/7/2000, could fix different prices for different classes of buyers and that a special trade

discount to a buyer lifting 90% of the assessee's output on guaranteed basis was permissible. In the case of Metal Box India Ltd. vs. CCE, Madras (supra) what the Apex Court has held is that in view of the 1st Proviso to Section 4 (1) (a) of Central Excise Act, 1944, as the same stood during the period prior to 1/7/2000, it was permissible for a manufacturer to have different normal prices for different classes of buyers and that accordingly there could be different rates of a particular trade discount for different classes of buyers and that a special trade discount given to a bulk buyer is permissible. However, for classification of buyers for the purpose of different sale price to them, there must be some rational basis and it cannot be arbitrary. When the different prices are fixed by an assessee for different classes of buyers by the way of different trade discount, there must be some rational criteria for classification of the buyers and arbitrarily treating some buyers as special customers for higher trade discount is not correct. In other words, the criteria for classification of the buyers and the trade discount for different classes of buyers must be known before the clearance. The discounts given on discretion after the sale for which the criteria was not known prior to the sale would not be admissible. The special discounts given to some buyers by the appellant do not satisfy the above criteria and, therefore, in our view the Commissioner (Appeals) has gone wrong in permitting the deductions of these special discounts, as it is not known as to on the basis of which criteria those buyers had been treated as a different class of buyers. In view of this, the Commissioner (Appeals)'s order permitting deduction of special discount under the "rebate and similar claims" head is not sustainable and is liable to be set aside.

8. As regards, the Commissioner (Appeals)'s order disallowing the transit insurance, since the appellant's sales are through depot and the duty is liable to be paid on the depot price, the assessable value would include transport and insurance charges upto the depot and only the deduction of transit insurance charges upto the depot and only the deduction of transit insurance in respect of transportation from the depot to the Customer's premises would be inadmissible as it is not the case of the department that the sales were on FOR destination basis.

9. As regards the question as to whether deduction of "packing and forwarding charges" is to be allowed, the packing and forwarding charges are mainly expenses incurred on packing of the goods sold from the depot. The appellant's contention is that the goods manufactured by them – laminated sheets are normally sold without packing and only in some cases where the sales are to the outstation customers, the goods are packed in cartons on the instruction of the Customers. The department's contention on the other hand, is that the laminated sheets cannot be sold in the ordinary course of trade without packing and, therefore, the packing charges would be includible in the assessable value. The Apex Court in the case of U.O.I vs. Bombay Tyre International ltd. (supra) on the question of inclusion of packing charges in the assessable value has held that the packing in which the goods are ordinarily sold in the course of whole sale trade to the wholesale buyer is includable in the assessable value – the degree of packing in which the excisable article is contained may vary from one class of articles to another. The Apex Court in the case of Union of India vs. Godfrey Philips India ltd. reported in 1985 (22) E.L.T. 306 (S.C) has held that the cost of packing which is essential for protection of excisable goods during transportation is also includible in the assessable value. Relying upon these

judgments, the Apex Court in other judgments in the case of Royal Enfield vs. CCE, Chennai (supra) has held that the packing used by an assessee in respect of the goods, which is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market would be includable in the assessable value. In this case, on the question as to whether the laminated sheets manufactured by the appellant are normally sold without packing or are sold in packed condition there are contradictory claims. The Commissioner (Appeals) in the impugned order has not given any finding on this issue and has simply disallowed it as deduction. Therefore, on this point, the matter needs to be remanded to the Commissioner (Appeals) for ascertaining as to whether the goods manufactured by the appellant are normally sold without packing or are normally in wholesale trade in packed condition and after ascertaining this fact, the issue is required to be decided in accordance with the Apex Court judgement in the case of UOI vs. Bombay Tyre International Ltd. (supra), UOI vs. Godfrey Philips India Ltd. (Supra) and Royal Enfield vs. CCE, Chennai (Supra).

10. In view of our above findings, the Commissioner (Appeals)'s order allowing the deduction on account of damage discount (discount through credit notes) and special discount to special customers (rebate and other claims) is set aside and on these points the order passed by the original Adjudicating Authority is restored and as such, the Revenue's appeal is allowed.

11. As regards, the Commissioner (Appeal)'s findings on the other two issues – deduction of "insurance premium" and deduction of on account of "packing and forwarding charges", as observed above, the deduction of transit insurance premium would be admissible only in respect of transportation ex-depot upto the customer's premises, but the deduction in respect of transit insurance premium during transit from factory gate to depot would not be admissible.

11.1 The duty demand must be re-quantified on this basis for which the matter has to be remanded. As regards, the "packing and forwarding charges", the matter is to be remanded for denovo decision after ascertaining as to whether the goods are ordinarily sold without packing or in a packed condition.

11.2 Accordingly, the Commissioner (Appeals)'s order on the above two points is set aside and the matter is remanded to commissioner (Appeals) for denovo decision.

12. The appeals stand disposed of as above.

(Pronounced in open court on 16.10.2012.)