A M/S ELGI EQUIPMENTS LTD.

*v.*

COMMISSIONER OF CENTRAL EXCISE, COIMBATORE

AUGUST 14, 2007

B [S.H. KAPADIA AND V.S. SIRPURKAR, JJ.]

*Central Excise Act, 1944:*

*s. 4(1)(a)(as it stood before 2000)—Valuation of excisable goods—*
C *Trade discount—Claim with regard to—Assessee-manufacturer of service-station equipments—Claiming trade discount as a part of its sales pattern—Assessee allowing 20% discount to distributors on list price on 90% sales effected at factory gate—To sub-dealers discount given at 8% and balance 12% given to distributors as commission—Show cause notice issued to assessee*
D *demanding differential amount of duty and penalty without furnishing details—Held: Revenue should have given detailed particulars—Assessee has given benefit of trade discount of 20% to majority of its dealers and, therefore, it was entitled to trade discount of 20% in all cases.*

*Central Excise(Valuation) Rules, 1975:*

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*r. 6(a)—Benefit of abatement—Goods sold in retail—Wholesale price at factory gate available—Held: Assessee-manufacturer was entitled to abatement.*

*Goods under stock transfer—Assessable value—Computation of—Large*
F *percentage of goods sold in wholesale at factory gate—A small percentage cleared through depot—Held: When ex-factory price is ascertainable, Revenue erred in taking depot price as basis of the assessable value.*

*Kirloskar Brothers Ltd.* **v.** *Commissioner of Central Excise, Pune,* **(2005) 191 ELT 299 and** *Indian Oxygen Ltd.* **v.** *Collector of Central Excise,* **(1988) 36 ELT 723, relied on.**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7777-7780 of 2001.

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From the Orders No.C/967 to 970/2001 dated 26.6.2001 of the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench at Chennai in Appeal Nos. E/V/206/96 and E/V/254 to 256/96-Md.

V. Lakshmi Kumaran, Alok Yadav and M.P. Devanath for the Appellant.

V. Shekhar, K.K. Senthivelan, Sudhir Kr. Sajwan and B. Krishna Prasad for the Respondent.

The Order of the Court was delivered by

**ORDER**

The short point which arises for determination in these civil appeals filed by the assessee is - Whether the assessee was entitled to 20% trade discount.

M/s. Elgi Equipments Ltd., having registered office at Coimbatore, have four factories located at four different places. They manufacture compressors, pumps, service-station equipments etc. M/s. Elgi Equipments Ltd. (assessees) claimed trade discounts varying from 10% to 45% on different products. They declared that such discount was a part of their "Sales Pattern". During the course of assessment, the Department noticed certain price discrepancies. Therefore, an enquiry was made; statements of Directors were recorded and, on that basis, a show cause notice was given to the assessee claiming differential amount of duty of Rs.40 lakhs. The assessee was also asked by the show cause notice as to why a penalty of Rs.10 lakhs should not be imposed.

In these appeals, we are concerned with the period January, 1991 to April, 1992. The main case of the Department was that the appellant-assessee did not possess uniform sales pattern; that they gave different discounts to Area Distributors and dealers to whom goods were cleared directly at the factory gate and that even in such a case, the Area Distributors were paid the balance 12% and therefore on account of this differential discount the assessees were not entitled to trade discount of 20%.

As stated above, assessee is in the business of manufacturing service-station equipments. It is necessary to understand their Sales Pattern. The goods were sold to three distributors. These sales were effected at the factory gate directly to the distributor allowing 20% uniform discount on the list price. However, in respect of sales to sub-dealers discount given was 8% and

A balance 12% was given to the distributors as commission.

At the outset, we may mention that show cause notice was the foundation for the levy of penalty. In the entire show cause notice, the requisite details have not been furnished, namely, the total number of dealers, the number of main dealers, the number of sub-dealers and the rate of discount B to main dealers and small dealers. The show cause notice proceeds on the basis of the statements of some of the sub-dealers or small dealers taken on record by the adjudicating authority. In a matter of this type, the Department should have given particulars of the total number of dealers, the total number of dealers who got the trade discount at 8% and the total number of dealers C who got the trade discount of 20%. There is no adjudication by the original authority on this point. Therefore, we have to proceed on the basis on the figures given by the assessee, namely, that the majority of the dealers got the benefit of 20% discount and a small minority of dealers got the benefit of trade discount of 8%. However, the fact remains that assessee gave discount at all times at 20%, even when they gave discount of 8% to small dealers D because even at that time they gave commission of 12% to big dealers. If that be the case, then, the sales pattern clearly indicates that as a matter of practice, the assessee has uniformly given the benefit of trade discount at 20%. It is well settled that while adjudicating upon questions relating to sales pattern, one has to find out whether the benefit of trade discount is given E uniformly. On facts, we find that the assessee has given trade discount of 20% uniformly to all its dealers.

In this connection, we may cite the judgment of this Court in the case of *Kirloskar Brothers Ltd.* v. *Commissioner of Central Excise, Pune,* reported in (2005) (191) E.L.T. 299. Vide paragraph 10, it has been held by this Court F that in order to get the benefit of Section 4(1)(a) (as it stood at the relevant time), the assessee has to establish that the discount claimed was in accordance with the normal practice of wholesale trade in the concerned goods sold to different classes of buyers, and it shall be subject to existence of circumstances specified in Clause (a). Such circumstances being charging of normal price at which such goods are ordinarily sold; sale must be to a buyer in the course G of wholesale trade; same must be in the wholesale trade for delivery at the place and time of removal; the buyer should not be a related person and the price should be the sole consideration for the sale. It has been further held that in case where goods are sold to different class of buyers in accordance with normal practice, it has to be established that the same was the normal H practice of the wholesale trade in such goods. In fact, in paragraph 10, an

illustration has been given, namely, that if out of ten dealers engaged in wholesale trade, only two are given discount while others are not, then, it cannot be the normal practice of the wholesale trade in such goods. After the illustration, the test follows, namely, that if majority of persons engaged in the wholesale trade are given trade discount, then it would constitute "normal practice of the wholesale trade". A B

Applying the above test, we have a situation where 90% of the big dealers have got the benefit of trade discount at 20%, that even in cases where 8% discount is given to sub-dealers, 12% is given to big dealers. There is one more aspect which needs to be mentioned. Assessee is in the business of manufacturing service-station equipments. As indicated above, the goods are supplied to a chain of big and small dealers. Ultimately, the assessee got his business from the main dealers in 90% of the clearances. Therefore, even in cases where the assessee gave discounts of only 8% to small dealers, who constitute 10% of the total number of dealers, in order to retain the distribution channel, assessee gave 12% trade discount to the distributors (which the Department has termed as commission). Ultimately, it is a business decision which the assessee has taken in order to retain his chain of distribution. The assessee does not want that chain to be disrupted. Lastly there is no evidence on record to show that distributors were agents of the assessee or related to them in any way. The word "distributor" in the price list is not determinative that they are related to the assessee. In the circumstances, we are of the view that the Department had erred in disallowing the trade discount at 20%. C D E

For the afore-stated reasons on this particular point, we hold that the assessee was entitled to a trade discount of 20%.

Since the point involved is likely to recur, we would like to analyze Section 4(1)(a) of the Central Excises and Salt Act, 1944, as it stood at the material time. Section 4 refers to valuation of excisable goods for purposes of charging of duty. Section 4(1)(a) states that where under the Central Excise Act, 1944, duty of excise is chargeable on any excisable goods with reference to value, such value, shall, subject to the other provisions of Section 4, be deemed to be the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale. In the present case, we are concerned with the words "ordinarily" and "in the course of wholesale trade". F G H

A At the outset, it may be stated that in this case, we are concerned with the law as it stood before 2000. At that time, assessable value was equated to normal price which was the wholesale price at the factory gate. The word 'ordinarily' in Section 4(1)(a) indicated that if the sale pattern adopted by an assessee indicated that a large part of the total production was sold at wholesale price at the factory gate and that the assessee had given the B benefit of trade discount to large number of its dealers at a particular rate, then, it would constitute "normal practice of the wholesale trade" in which event the assessee would be entitled to trade discount across the board. Once the assessee proves that 20% (as in this case) was the normal practice of the trade, then Department cannot refuse it on the ground that some C dealers got the discount at 8%.

Applying the above test to the facts of the present case, we find that as a general rule in this case, the assessee has given the benefit of trade discount of 20% to majority of its dealers; that in fact they have given discount at 12% to big dealers where they gave discount of 8% to small D dealers, and, therefore, the assessee was entitled to trade discount of 20% in all cases.

There are two points remaining which are required to be dealt with. In the present case, some of the goods are sold in retail. It is the case of the assessee that where goods are sold in retail, duty was payable on value which E is the wholesale price at the factory gate. In the present case, the wholesale price at the factory gate was available. That price was the retail price. In this case, assessee was denied abatement. In this case, Rule 6(a) of the Central Excise (Valuation) Rules was applicable. Under that Rule, assessable value would be the retail price as reduced by an amount to arrive at the price at F which goods would have been sold by the assessee in the course of wholesale trade to a buyer at arm's length. It is not the case of the Department that the said Rule was not applicable. It is not the case of the Department that wholesale price at the factory gate was not ascertainable. In the circumstances, we hold that the assessee was entitled to the abatement.

G The last question which arises for determination is concerning the goods which were under stock transfer. In the present case, a large percentage of the goods was sold in the wholesale at the factory gate. However, a small percentage has been cleared through the depot. The Department has taken the depot price as the basis of the assessable value on the ground that the H assessee is selling the goods through the depot. Our attention has been

invited to the judgment of this Court in the case of *Indian Oxygen Ltd.* v. *Collector of C.E.*, reported in (1988) (36) E.L.T. 723. In the said judgment, this Court has held that in cases where ex-factory price is ascertainable, then the assessable value shall be based on the wholesale price at the factory gate and not on the depot price. In the present case, despite the said ruling, the Department has held that the depot price shall form the basis of the assessable value.

For the afore-stated reasons, the impugned decision of the Tribunal is set aside and the appeals stand allowed, with no order as to costs.

R.P. Appeals allowed.