

Ø\177ITEM NO. 101  
Part-heard

COURT NO.5

SECTION III

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 6614 OF 2000

C.C.E., New Delhi

Appellant (s)

Versus

M/s. D.C.M. Textiles  
(With appl(s) for ex parte stay and with office report)

Respondent (s)

Date: 02/02/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE P.K. BALASUBRAMABYAN

For Appellant(s) Mr. Rajeev Dutta, Sr. Adv.  
Mr.K. Swami, Adv.  
Ms. M.F.Humayunisa, Adv.for  
Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. R. Krishnan, Adv. for  
Mr. C.N. Sree Kumar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The Appeal is dismissed. No order as to costs.

(Parveen Kr. Chawla)  
Court Master

(Khushi Ram)  
Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6614 OF 2000

Commissioner of Central Excise, New  
Delhi

Appellant (s)

Versus

## O R D E R

This is a statutory appeal filed by the Revenue under Section 35(L) of the Central Excise Act, 1944 ( hereinafter referred to as 'the Act') against the final order No. 577/2000-A dated 12th July, 2000 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal') in Appeal No. E/1294/2000A whereby the Tribunal has set aside the order of Commissioner(Appeals); the original authority and held that the commission paid by M/s DCM Textiles, the respondent herein, to its dealers was deductible as a trade discount for the purposes of computing assessable value of cotton yarn.

## Facts:

During the scrutiny of records for finalization of provisional assessment the authorities observed that deduction claimed in respect of the commission paid to its dealers by the respondent was not permissible as the appointed dealers were the selling agents and not the dealers. Accordingly, show cause notice dated 6.11.1996 was issued calling upon the respondent-assessee to debit the differential duty. The assessee submitted its reply and disputed the revenue's stand and submitted that the commission paid to the dealers was deductible being a trade discount for computing assessable value of the cotton yarn.

The Assistant Commissioner confirmed the demand of

Rs.4,68,766/- relying upon a judgment of this Court in the case of M/s

Coromandel Fertilisers Limited v. Union of India & Others reported in 1984

(17) ELT 607(SC) by disallowing the deduction in respect of commission

amounting to Rs.81,52,442/- paid to the dealers by the respondent-assessee

attributable to their sale promotion activities as commission. It was further

held that the deduction in respect of commission paid to the dealers was not

permissible deduction as the appointed dealers were the selling agents of the

respondent for sale of cotton yarn on behalf of the respondent.

Aggrieved by the aforesaid order, the respondent-assessee filed an

appeal to the Commissioner (Appeals), New Delhi. The Commissioner

(Appeals) vide its order dated 28.2.2000 dismissed the appeal on the ground

that the commission paid was of the nature of an incentive for effecting

higher sales and going by the nature of commission, it could not qualify as

a trade discount within the meaning of Section 4(iv)(d)(ii) of the Act, as it

stood then.

Feeling aggrieved, the respondent-assessee preferred an appeal

before the Tribunal. The Tribunal, relying upon on the terms of the

agreement entered into between the parties, allowed the appeal by the

impugned order. It was observed that the sale made by the respondent to

the dealers was on 'principal to principal basis' and the commission paid to

the dealers was in the nature of trade discount and the respondent-assessee

was entitled to deduct the same while calculating the net assessable value.

Revenue, being aggrieved, has filed the present appeal.

Counsel for the parties have been heard at length.

Respondent has entered into different but similar agreements with its dealers in connection with the sale of cotton yarn manufactured by it and one of the agreement was produced during the course of proceedings before the original authority for the purposes of ascertaining the terms and conditions at which the goods were supplied by the respondent to its dealers. The agreement purports to be a dealership agreement. The relevant clauses of the agreement are reproduced hereunder:

"2. That the Cotton Yarn will be delivered to the dealer on his requisitions placed in company's office at Delhi, Ex-company's Delhi Godown subject to availability of the stock with company in their said godown.

3. That the dealer shall be wholly and solely responsible for making full payment to the company of all stocks of Cotton Yarn received from the company.

xx xx xx

xx xx xx

8. That the company shall pay the dealer commission of 1.5% including brokerage, if any, on the net value of the sale. The commission payable shall be worked out at the end of every quarter and remitted to the dealer.....

9. The dealer shall be paid ½% cash discount if cheque/pay order/draft is issued and handed over to company's staff by the dealer within one day of date of the sale invoice. The cash discount will be 0.25% if the payment is made by the dealer by cheque/pay order/draft within four days of the date of sale invoice.

10. No interest shall be levied if the payment is made by the dealer by cheque/pay order/draft within seven days of the date of the sale invoice for payment delayed beyond seven days of the date of sale invoice interest will be recoverable from 8th day of the sale invoice till the date of issue of cheque/draft/pay order and handed over to the company's staff. The interest shall be recovered at the end of every month.

11. That the dealer shall arrange to lift the stocks of cotton yarn purchased by the dealer as per the agreed schedule failing which the company may issue the sale invoice in dealer's favour. In such event, terms of cash discount/interest free period and interest recoverable shall start from the date of sale invoice itself.

xx xx xx

13. That the dealer shall keep with the company a security deposit of Rs.50,000/- as security which shall carry on interest of 15% per annum which will be payable yearly.

xx xx xx  
xx xx xx

16. If at any time this agreement is terminated in accordance with the conditions of this agreement, the accounts shall be finalised and settled within one week from the date of its termination.

A bare perusal of the above-noted clauses clearly shows that the agreement entered into between the respondent and dealers was on 'principal to principal basis' and it was an absolute sale made by the respondent in favour of the dealers. The dealer is required to make full payment of the cotton yarn purchased by him forthwith and he is given half percent cash discount if the payment is made within one day, 0.25 per cent if the payment is made within four days and if the payment is not made within seven days then from 8th day onwards the dealer becomes liable to pay interest on the delayed payment. This indicates that there was an absolute sale made by the respondent to its dealers and the sale was on 'principal to principal basis'.

This Court in Union of India & Others v. Bombay Tyres International Pvt. Ltd. reported in 1984 (17) ELT 329 (SC) on further arguments held trade discount to mean:

"1. 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."

It was held that discount allowed in the trade, 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, then the same shall amount to a trade discount provided the sale is from 'principal to principal basis'. It was further observed that such trade discount shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice value.

Original authority as well as Commissioner(Appeals) had stressed upon the point that since the trade discount was not paid to the dealer at the time of the preparation of the invoice and was to be paid later based on the net sale value of the sale effected ( $\frac{1}{2}$  per cent of the net sale value); that the agreement between the parties amounting to be an agency agreement and not the dealership agreement and the sale was not from principal to principal basis. We agree with the Tribunal that this view is not sustainable on the facts of this case.

This Court in Moped India Limited v. Assistant Collector of Central Excise, Nellore and Others reported in (1986) 1 SCC 125, where the assessee was manufacturing Mopeds and was paying commission to its

dealers, held that irrespective of the fact that the amount allowed to the

dealer has been referred to in the agreement as commission was in fact trade

discount because the label given by the parties would not be determinative

of the fact whether it is a trade discount or a commission paid to an agent. It

was observed:

"...Now it is true that this amount allowed to the dealers has been referred to in the agreement as commission but the label given by the parties cannot be determinative because it is for the Court to decide whether the amount is trade discount or not, whatever be the name given to it. If we look at the terms of the agreement, it is clear that the agreement was between the appellants and the dealers on principal to principal basis. The clauses of the agreement which we have set out above clearly show beyond doubt that under the agreement, the mopeds were sold by the appellants to the dealers and the dealers did not act as agents of the appellants for the purpose of effecting sales on behalf of the appellants. It is clear from Clause 5(a) of the agreement that the bills in respect of the mopeds delivered to the dealers were to be sent by the appellants through their bankers and it was the responsibility of the dealers to retire the bills for the purpose of taking delivery of the mopeds. Clause 5(b) of the agreement laid an obligation on the dealers to insure the mopeds against all risks, pilferage, non-delivery and SRCC including breakage from the time the mopeds left

the factory or stock-yard of the appellants until they arrived at the premises of the dealer and this again would show that the dealers acted as principal to principal in purchasing the mopeds from the appellants. The dealers were also liable under Clause 6 of the agreement to maintain adequate organization for sale and service of the mopeds, including show rooms, service stations, repair shops, spare parts, salesmen etc. and the mechanics were also to be trained at the cost of the dealers. The relationship between the appellants and the dealers was clearly on principal to principal basis and in the circumstances it is difficult to see how the amount of Rs.110, 145 and 165 allowed to the dealers in respect of different varieties of mopeds could be regarded as anything other than trade discount. The appellants charged to the dealers the price of the mopeds sold to them less the amount of Rs.110, Rs. 145 and Rs.165 in respect of different varieties of mopeds. These amounts allowed to the dealers were clearly trade discount liable to be deducted from the price charged to the dealers for the purpose of arriving at the excisable value of the mopeds."

Counsel for the appellant-revenue has relied upon a judgment of this Court in Coromandel Fertilisers Limited (supra) on which reliance has also been placed by the Commissioner(Appeals). The said judgment would not be applicable to the facts of the present case as in the said case the agency had been created and the goods were supplied to the agent for sale and not on principal to principal basis.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no order as to costs.

.....J.  
(ASHOK BHAN)

New Delhi; .....J.  
February 02, 2006. (P.K. BALASUBRAMANYAN)