

(1997) 03 SC CK 0149

In the Supreme Court Of India

Case No : Civil Appeals Nos. 2309-2311 Of 1995

Addison and Co. Ltd., Madras

APPELLANT

Vs

Collector of Central Excise, Madras

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4(4)

Citation : (1997) 91 ELT 532 : (1997) 5 SCC 763 : (2003) 132 STC 374

Hon'ble Judges : K. S. Paripoornan, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Heard the Counsel for the parties.
2. Two questions arise in these appeals namely (1) deductibility of turnover discount and (2) additional discount.
3. So far as the additional discount is concerned the matters have to go back to the Assistant Commissioner to ascertain the nature and character of the discount and determine its deductibility according to law.
4. So far as the turnover discount is concerned we are of the opinion that it has to be allowed in the light of the judgment of this Court in Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, . In these cases also the turnover discount is provided as an incentive for the dealer to lift higher and higher volume of goods. The rate of discount ascends according to the rise in the volume of purchases. For example, for Delhi City the figures are the following:

ANNUAL TURNOVER POLICY FOR ALL TYPES OF STANDARD CUTTING TOOLS
(Period : April, 1988 to March, 1989) Applicable for the Dealers covered by :
Delhi City ----- Turnover slabs Turnover
Discount on on Gross value Gross value Above upto
----- - 4.20 Nil 4.20 8.50 2.0% 8.50 12.00

3.0%	12.00	18.70	4.0%	18.70	24.80	5.0%
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5. The policy under which general discounts are given also contains a further clause to the following effect:

Turnover discount is given in addition to trade discount. The rate of turnover discount varies from region to region, product to product within the same region and also depends on the volume of turnover achieved by each dealer. Since the actual amount of annual turnover discount for which each dealer is eligible can be ascertained only in the year-end, we are allowing a portion of the same based on the previous years performance is claimed and allowed in the invoice itself at the time each delivery. The balance of TOD will be given in the form of Credit Notes and refund will be claimed by us at the later stage.

6. A reading of the table and the note goes to show that the discount is given ad hoc on the basis of the previous year's performance and it is adjusted at the end of the year. If the volume of purchases falls to a lesser slab, the dealer has to refund to the assessee the difference amount and conversely if the volume ascends to the higher slab, the dealer will be paid the difference amount. This is a case of adjustment and is not hit by the words" (such discount not being refundable on any account whatsoever)" in Section 4(4)(d)(ii) of the Central Excises & Salt Act.

7. It is also clear from the policy that this discount is known at the time of the purchase by the dealer and is found to be a well-accepted normal practice in the trade in these goods.

8. It is submitted by Mr. Anil B. Divan, the learned senior advocate for the appellant that in case any refund is made in accordance with the above note by the dealer, the same shall be added back to the assessable value of the goods and duty will be paid thereon. This statement is recorded.

9. It is accordingly held that the turnover discount is an admissible deduction. The appeals are accordingly allowed in part and the matters remitted to the Assistant Commissioner for appropriate orders in accordance with law, in the light of the observations made in this judgment. No costs.