

**Luxco Electronics Vs. Collector of Central Excise**

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**SooperKanoon Citation :** [sooperkanoon.com/12158](http://sooperkanoon.com/12158)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Nov-20-1997

**Reported in :** (1998)(97)ELT450TriDel

**Appellant :** Luxco Electronics

**Respondent :** Collector of Central Excise

**Advocate for Pet/Ap. :** Shri. Gopal Prasad

**Judgement :**

1. These two appeals involve substantially the same issue as to whether the show cause notices issued were barred by limitation as they were issued beyond a period of six months from the relevant date. We are accordingly passing this combined order disposing of these appeals after hearing both sides.

2. Shri Gopal Prasad, learned Counsel for the appellant states as far as Appeal No. E/4296/89-A is concerned, the show cause notice did not contain any charge of suppression or wilful mis-statement or any of the ingredients specified in Section 11A of the Central Excise Act and accordingly the order confirming the duty demand raised in such a show cause notice cannot stand. In this connection, he relied on the Supreme Court decision in 1995 (76) E.L.T. 497 in the case of Collector of Central Excise v. HMM Ltd. As regards the next appeal, he stated that though the show cause notice did raise allegation of suppression of facts, this allegation is not correct since they filed the invoices wherein they had shown not only the price but the service charge also which was collected by them from their

customers. The adjudicating authority had held that their paying duty on the net value after excluding the service charge amounted to suppression and confirmed the demand. Learned counsel submitted that the facts of the case do not bear out the allegation and the order is liable to be set aside.

2. In reply Shri K. Srivastava, learned SDR stated that when the contention regarding the show cause notice relating to the first appeal may be valid in view of the Supreme Court's judgment cited by the learned Counsel, the plea as far as the second appeal is concerned would need further scrutiny. The adjudicating authority had examined the reply and the figures provided by the appellant regarding the break up value of what has been collectively called in the invoices as service charge. No doubt, the appellant had contended before the adjudicating authority that the service charge collected by them covered freight, insurance and cost of packing. The figures given by them on account of these different items were not, however, supported by any authentic evidence or certificate issued by a Chartered Accountant. It was in these circumstances, the deduction taken by them from the invoice price in arriving at the assessable value had been disallowed and the demand confirmed.

3. We have considered the arguments. The contention is that the show cause notice covered by the first appeal did not contain any mention of suppression, mis-statement etc. It merely referred to the incorrect payment of duty resulting in short levy. As regards the second appeal, the fact that the show cause notice did refer to suppression would not save it from the vice of limitation since what has happened in this case was not a case of suppression as the appellant had mentioned in the invoice the total price including what they called service charges which was shown separately. When they had thus shown the service charges separately in the invoice contributing to the total value and still paid duty on lesser value, that fact was apparent on a scrutiny of the invoice as also the duty paying document. In this view of the matter, this cannot be said to be a case of suppression. May be, appellant had wrongly paid less duty than what should have been paid but that would have required a notice within the normal time. Show cause notice issued for the longer period does not stand.

4. In view of the above reasoning, we set aside the impugned orders and allow both the appeals.

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