

Escorts Ltd. and anr. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-07-1998

Reported in : (1998)(75)LC45Tri(Delhi)

Judge : U Bhat, S T K.

Appellant : Escorts Ltd. and anr.

Respondent : Cce

Judgement :

1. The two appellants, each manufacturing Tractors, were filing price lists from time to time and clearing the goods on payment of duty on the approved prices. The dispute in these appeals relates to the period from January, 1977 to August, 1977. Show cause notices dated 4.10.1978 were issued to the appellants stating that they had not paid duty on the charges for publicity and advertisement during this period and duty should have been paid thereon and proposing demand of duty on such amount. Appellants resisted the notices on merits as well as on the ground of limitation. The Assistant Collector passed a common order overruling the objections and confirming the demands. This order having been confirmed by the Collector (Appeals), the present appeals have been filed. Appellants have also filed two miscellaneous applications seeking to raise additional ground of appeal. The ground relates to the finding on suppression of facts. It is seen that this ground has been raised in the Memoranda of Appeal already. Therefore, the miscellaneous applications are unnecessary and are withdrawn.

2. Shri Dinesh Charak, Manager-Law of M/s. Escorts Ltd. (M/s. Escorts Tractors Ltd. is merged in M/s. Escorts Ltd.) did not address argument on merits and confined his submissions to the question of limitation.

He contended that show cause notices are devoid of any averment attracting larger period of limitation under the proviso to Section 11A(1) of the Central Excise Act, 1944 and, therefore, show cause notices issued more than six months subsequent to the period in dispute would be barred by time. Shri K. Srivastava, SDR invited our attention to certain averments in the show cause notices, Order-in-Original and the appellate order and contended that show cause notices were not barred by time.

3. The only relevant averment in the show cause notices reads thus: "They have charged these expenses fraudulently in order to avoid payment of central excise duty leviable on such charges". This would only mean that the manufacturers had charged the expenses fraudulently.

These averments would not suggest that the manufacturer had committed any fraud on the Department or had suppressed any material information with intent to avoid duty. Significantly the show cause notices do not contain any allegation that pro rata cost of advertisement and publicity was collected by the manufacturers through separate debit notes or invoices which were not submitted along with the monthly returns. We emphasise this since the Assistant Collector stated that the manufacturers collected the amounts by issuing separate series of invoices and the Department was not apprised of such collection and this amounted to suppression of material fact and the Collector (Appeals) also made a similar observation. Appellants have produced before us a few copies of the invoices for the relevant period which referred not only to the approved prices but also to the pool publicity expenses. Even otherwise, since allegation of suppression was not made in the show cause notices and the show cause notices did not even purport to invoke the larger period of limitation, the notices must be held to be barred by time.

4. For the reasons aforesaid, the appeals are allowed and the impugned orders are set aside.

