Cce Vs. Ram Decorative and Industries

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SooperKanoon Citation : sooperkanoon.com/12873

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-13-1998

Reported in : (1998)(77)LC403Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Cce

Respondent : Ram Decorative and Industries

Judgement :

1. The dispute in this appeal relates to what is called "commitment charge" collected by the respondent from buyers who had entered into contract with the respondent for purchase of the excisable goods and failed to lift the entire quantity or part of the quantity of such goods. On coming to know that some amounts had been collected as "commitment charge" from the buyers and such charges had not been included in the assessable value, show cause notice was issued proposing demand of duty on the element of "commitment charge".

Respondent resisted the notice contending that "commitment charge" was not part of price but only liquidated damages for breach of the contract on the part of the buyers and therefore, the same cannot be included in the assessable value. This contention was accepted by the adjudicating authority who dropped the demand. The Collector of Central Excise being aggrieved has filed the present appeal.

2. On the facts there is no dispute that the "commitment charge" collected is related to quantity of goods which the buyer had agreed to lift but had failed to lift. It is, therefore, clear that the charge is clearly in the nature of liquidated damages for breach of contract. The Tribunal has taken the view that amounts recovered in the nature of liquidated damages cannot be part of the price. See Spring Fresh Drinks 1991 (54) 33 (T) : 1992 (40) ECR 113 (T) and Bhartia Cutler Hammer Ltd. 1998 (24) RLT 479 : 1998 (75) ECR 450 (T). We, therefore, find no ground to interfere and accordingly dismiss the appeal.