

Collector of Central Excise Vs. Modi Arc Electrodes Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-04-1998

Reported in : (1998)LC473Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Modi Arc Electrodes Ltd.

Judgement :

1. Shri N.K. Gaur, Commercial Manager of the appellant is present and seeks an adjournment on the ground that counsel is busy in a Civil Court in Meerut. We do not find this a valid ground for adjournment and accordingly we decline the request for adjournment. We have heard Shri M. Ali, JDR, and perused the papers.

2. Respondent, engaged in the manufacture of welding electrodes was receiving security deposits from all wholesale buyers but had not included the notional interest on the security amount in the assessable value for the purpose of determining and paying Central Excise duty.

The dispute in this appeal relates to the period 1982-83 to 1989-90 up to July, 1989. Show cause notice was issued stating that the security amounts received from wholesale buyers had been used as working capital, instead of borrowing an equivalent amount from Commercial Banks and therefore, notional interest at 18% should have been included in the assessable value. The notices proposed demand of total differential amount of duty of Rs. 17,875.24. Though respondent resisted the notices, the Assistant Collector passed a common order confirming

the demand. This order having been set aside by the Collector (Appeals), the Collector of Central Excise has preferred the present appeal.

3. The only ground urged by the appellant is that but for the receipt of security amounts respondent would have borrowed money from Commercial Banks and paid interest at 18% per annum. Therefore, notional interest at this rate should be treated as having been gained by the appellant and included in the assessable value. Shri M. Ali places reliance on the decision of High Court of Bombay in *Britannia Industries Ltd.* 1989 (44) E.L.T. 630. We find that in that case the assessee claimed deduction of interest paid on security amounts and the High Court rejected this claim. In the present case also respondent was paying interest @ 8% per annum to the wholesalers who furnished security deposit. However, the present is not a case of claim by the assessee of deduction of amount of interest paid but it is a case of inclusion by the department of notional interest on the security deposits in the assessable value. Respondent has explained that security deposit was collected in view of the risk of the consignees not accepting delivery of the consignments and the interest is paid at 8% per annum to them. The department has not alleged that the receipt of the security deposit amount from the wholesalers had any effect on the price or had depressed the price to any extent. In the absence of such allegation or proof the question of adding to the assessable value notional interest on account of security deposit will not arise.

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