

**Sonia Engineering Works Vs. Cce**

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

**Decided On :** Sep-02-1998

**Reported in :** (1998)(79)LC799Tri(Delhi)

**Judge :** U Bhat, S T K.

**Appellant :** Sonia Engineering Works

**Respondent :** Cce

**Judgement :**

1. Appeal E/1714 of 98-A and E/Stay/1287/98-A are filed by the manufacturer M/s. Sonia Engineering Works Pvt. Ltd. (for short the Manufacturer). The appeal E/1715 of 98-A and E/Stay/1287 of 98-A are filed by Sri Rajesh Malhotra, one of the Directors of the Manufacturer.

2. In the course of the hearing of the applications filed under 35F of the Central Excise Act, 1944, we felt that interests of justice and expeditious determination of the controversies in this case required a remand and therefore we waived requirement of pre-deposit and heard the appeal.

3. The dispute in this appeal relates to the period from 1.4.1994 to 30.8.1996. Appellant has been manufacturing Pressure Cookers and Pressure Pans and clearing the same for home consumption without following Central Excise procedures and without paying Central Excise Duty. On receipt of the information to the above effect, surveillance was mounted by Central Excise preventive staff.

On 30.8.1996. Truck No.HR 38-8628 loaded with Pressure Cookers was intercepted on the main G.T. Karnal Road. On demand invoice and delivery challan were produced by the Driver of the Truck who stated that the goods were loaded in the premises of the manufacturer. The invoice did not contain the Excise declaration code or any serial number. The Truck was taken to the Factory premises of the manufacturer. The Director of the manufacturer produced stock register maintained upto 17.5.1996. The officers conducted stock taking of the finished goods and seized the pressure cookers loaded in the Truck and the cookers and pans found in the Factory premises. The Director failed to offer any satisfactory explanation for failure to observe Central Excise procedures and the goods as well as the Truck were seized. Subsequently pressure cookers were seized from the residential premises of the Director. On 7.9.1996 the manufacturer deposited Rs. 20 lakhs towards Excise Duty payable on the clearances. On the basis of the invoices and other records the quantum of the goods manufactured and cleared during each year in the period under consideration and the assessable value thereof were determined. Show cause notice dt. 7.2.1997 was issued to the manufacturer and the Director referring to the above facts in detail alleging total suppression of the material facts from the knowledge of the Department with intent to evade duty and total failure to follow Central Excise procedures and proposing confiscation of the seized goods and demand of Duty on the goods manufactured and cleared during the above period and proposing imposition of penalty under Section 11 AC of the Act and Rules 9(2)-173Q and 226 of the Central Excise Rules, 1944 on the manufacturer and under Rule 209-A of the rules on the Director. Notice also proposed charging interest on the amount of Duty.

4. Appellants resisted the notice on the ground that they were unaware of the requirement to follow Central Excise procedures or to pay Central Excise Duty. As soon as they came to know about it, an amount of Rs. 20 lakhs was deposited towards the arrears of the Duty and therefore further action should not be pursued.

5. The Commissioner confirmed the Duty demand of Rs. 21,20,167/- (subject to deduction of Rs. 20 lakhs), directed confiscation of the goods seized from the Factory premises with an option to redeem on payment of fine of Rs. 1 lakh,

confiscation of the goods seized from the Truck with option to redeem on payment of fine Rs. 3.75 lakhs and confiscation of the Truck with option to the owner of the Truck to redeem on payment of fine Rs. 5.2 lakhs. He imposed penalty of Rs 21,20,167/- on the manufacturer under the Section 11AC of the Act, of Rs. 3 lakhs on the manufacturer under the rules referred to above. He imposed penalty of Rs. 3 lakhs on the Director. Interest @ 20% from the respective dates was directed to be paid.

6. The learned Counsel for appellants in the course of his submissions did not challenge the Duty liability, but challenged the quantum of Duty on the ground that deductions on the account of freight, sales tax, insurance and Excise Duty should have been allowed. According to him, if these deductions are to be granted, Duty liability will go down to Rs. 14 lakhs. He also contended that imposition of penalty under Section 11AC of the Act and interest under Section 11AB of the Act are unsustainable since these provisions came into effect only on 25.9.1996 and Duty liability related to the period prior to that date. According to him the penalty imposed on the manufacturer and Director under the rules would also require reconsideration if the quantum of duty is reduced. We agree that penalty imposed under Section 11AC and interest imposed under Section 11AB is not sustainable. The appellants produced before the Commissioner a work sheet showing the amounts spent in each year for freight, payment of sales tax and the amount of Excise Duty.

The Commissioner disallowed deduction on account of freight in the absence of evidence. He rejected the claim for deduction of sales tax on the ground that sales tax for the entire period was paid only in the September and October '96 and sales tax had not paid on the respective due dates. He did not deal with the claim for deduction of element of Duty in determining the assessable value.

7. According to the appellants, copies of the relevant invoices, goods receipts and sales tax challans had been produced before the Commissioner. We are not able to verify the correctness of this submission. However, copies of these documents have been produced before us. In the circumstances, we are of opinion that the claim for deductions should be reconsidered by the original authority. So far as

Sales tax is concerned, the Commissioner was not justified in refusing to allow deduction merely on the ground that the Sales tax was paid on subsequent dates. The liability for Sales tax subsists and postponement of payment of Sales tax would not effect admissibility for deduction.

Duty has to be calculated on the basis of correct assessable value which can be arrived at only after sales tax payable and paid is deducted. We hold that the sales tax for goods cleared during the said period and paid subsequently to be deducted in arriving at the assessable value.

8. The Commissioner will examine the records which should be made available by the appellant and determine the freight charges paid and the element of Excise Duty required to be deducted in arriving at the assessable value and quantum of Excise Duty payable. Appellants have a claim that Aluminium circles used as inputs by the manufacturer were Duty paid, that the manufacturer would be entitled to avail the benefit of Modvat credit, that Modvat credit was not availed because appellant was not following Central Excise procedures ostensibly on account of ignorance and therefore the manufacturer should be allowed the benefit of Modvat credit. This aspect also would be considered by the Commissioner in passing the revised order.

9. We suggested to learned Counsel for the appellants that in case of remand, the manufacturer should deposit some amount towards penalty and learned Counsel submitted that if there is a direction, the manufacture will deposit the amount.

10. For the reasons aforesaid, we set aside that the impugned order quantifying the Duty payable and the penalty imposed on the manufacturer and the Director under the rules. We also set aside the penalty imposed on the manufacturer under Section 11AC and interest under Section 11AB It is made clear that the order to the extent it relates to confiscation is sustained.

11. The case is remanded to the jurisdictional adjudicating authority for passing a fresh order after giving appellants an opportunity of producing of relevant documents in proof of the quantum of deductions admissible and of personal hearing. We direct the manufacturer, the appellant in appeal No. E/1714-1715/98-

A to deposit a sum of Rs. 1 lakh before the lower authority within one month from today. The appeal is allowed accordingly and the applications are disposed of.

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