

Jay Cylinder Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-1999

Reported in : (1999)(113)ELT94TriDel

Appellant : Jay Cylinder

Respondent : Commissioner of Central Excise

Judgement :

1. Shri C.L. Sawhney, Consultant appearing for the appellants referred to the show cause notice issued on 31-7-1996 raising duty demand for the period 1993-94 and 1994-95. He submits that the demands were time barred. Learned JDR submits that the show cause notice itself states that the price lists were approved only provisionally and therefore there was no question of any time bar and the show cause notice was not barred by limitation.

2. We have been referred to the declaration filed by the appellants for 1994-95 (page 13-14 of the appeal papers) in which the Assistant Commissioner has made endorsement "accepted provisionally". Learned Consultant submits that endorsement made in 1996 cannot relate back to the period for which the declaration was made and therefore the claim of provisional assessment made by the department is not tenable.

3. We find that this preliminary objection taken by the appellant has force as there is nothing on record to show that the provisional assessment was made at the time of approval of the declaration. Learned Consultant had also submitted that the

appellants were neither called upon to execute any bond nor had they executed any bond in pursuance of any provisional assessment under the rules. This would further show that the assessment was not provisional. In the facts as explained by Consultant and as appearing from record, we sustain the ground taken by the appellants that the demand is time-barred.

4. We note from the record that the approach adopted in this matter by the concerned excise authority is highly questionable inasmuch as the invoking of extended period by the department is based on an endorsement made after the lapse of 2 years. This is a matter which requires serious consideration at the level of the Board so that similar incidents are not repeated.

5. Appeal is allowed and the impugned order is set aside in view of the above.

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