Bhor Industries Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-21-1999

Reported in : (1999)(85)LC27Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Bhor Industries Ltd.

Respondent : Cce

Judgement :
1. When these stay applications came up for hearing, it appeared that at this stage itself the appeals could be taken up for disposal. Both sides agreeing, this was done.

2. The appellants claimed 2% cash discount in the various price lists filed by them. At subsequent dates show cause notices were issued seeking levy and recovery of duty in cases where it was not shown that the cash discount was passed on to the buyers. Before the Assistant Collector written and oral submissions were made. The Assistant Collector did not accept the contention of the assessee that cash discount was a permissible deduction from the sale price irrespective of whether it was passed on to the customers or not. He observed that the decision in the case of Jenson & Nicholson (India) Ltd. was not applicable to the assessee's case. On this ground he confirmed the demands in all seven show cause notices. The assessee then filed appeals before the Commissioner (Appeals). Before the Commissioner (Appeals) several citations were made and it was claimed that the

Assistant Collector had not granted an adjournment but had decided the issues in an ex-parte order. On hearing the assessees the Commissioner (Appeals) passed the following order: I have carefully considered the submission of both sides. The various case-laws, including case-laws specifically cited by the appellants, confirm the legality of cash-discount, if passed on to the buyers of the assessee. However, having regard to the facts and circumstances brought out before me, I find that no adequate opportunity was given to the appellants and no proper verification of documents was undertaken. I accordingly direct the Assistant Commissioner to decide the issue by providing adequate opportunity to the appellants to plead their case and then to pass a speaking order. Accordingly, appeal is disposed off.

3. Against this order these appeals have been filed and applications have been made for stay of the operation of the order.

4. Shri J.M. Patel, advocate, relied upon the Tribunal's judgment in the case of Kamalakshi Finance Corporation Ltd. and Bell Ceramics Ltd. v. CCE, Order No. 3668-71/96 WZB dated 1.11.1996. In this judgment the Tribunal considered a number of decisions on this issue. The Tribunal cited the judgment of the Tribunal in the case of Stallion Shox Ltd. in which it was held that the cash discount was allowable irrespective of the fact that all the customers might not have availed of the benefit of the same. Following the judgment in the cited case the Tribunal had allowed the appeal. He submitted that in arriving at this decision the Tribunal had taken cognizance of the judgment in the case of Goodlass Nerolac Paints Ltd. When this judgment was challenged before the Supreme Court, the Supreme Court had dismissed the SLP.5. Shri Patel stated that the observation of the Commissioner (Appeals) as regards case law cited by them before him was wrong inasmuch as he held the impression that the case law cited upheld the legality of the cash discount only when passed on to the buyers; whereas the ratio is that even where the cash discount has not been physically availed of, its admissibility would continue. Shri Patel has two prayers. He would like us to decide the issue in the appeals at this level and in the alternative he would like this observation of the Commissioner to be removed from the order so that the Assistant Commissioner is free to independently assess the merits of the citation. We do not think that the Tribunal should undertake the job of examination of facts giving rise to the appeal

but feel that the job is best left for the jurisdictional Assistant Collector to perform. We however agree that the sentence of the Commissioner (Appeals) is likely to create a wrong impression in the mind of the Assistant Commissioner. We therefore modify the order of the Commissioner (Appeals) to the extent that the second sentence in the portion cited above shall stand deleted. The order remanding the proceedings back to the Assistant Commissioner is upheld. The Assistant Commissioner is directed to examine the various citations made by the assessees before him. He shall also give adequate opportunity to the assessees to present their case both in writing and orally and thereafter he shall pass a well-reasoned speaking order.