

Jaln Packaging Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-26-1999

Reported in : (2000)(90)LC113Tri(Mum.)bai

Judge : S Kang, a T V.K.

Appellant : Jaln Packaging Pvt. Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal filed by M/s. Jain Packaging Pvt.

Ltd. is whether proviso to Section 11A(1) is invokable for demanding the duty for the extended period.

2. When the matter was called no one was present en behalf of the appellants and the notice issued to them has been returned by the postal authorities with the remark "Company closed". We, therefore, heard Shri Jagdish Singh, learned DR and perused the record.

3. We observe that in the present matter the appellants were availing of the benefit of Notification No. 175/86. The operation of this notification was suspended during the period from 25.3.1986 to 31.3.1986 vide notification No. 202/86 dated 25.3.1986. The appellants continued to pay duty by availing the benefit of notification No.175/86. The department, therefore, issued a show cause notice on 21.3.1991 for demanding differential duty during the period from 25.3.1986 to

31.3.1986 which was confirmed by the Additional Collector in the impugned order holding that the appellants had suppressed the facts as they had not filed any classification list showing the changed position and availed the duty exemption for which they were not entitled. The appellants submitted that their RT-12 returns for March, 1986 was assessed by the department without any remark regarding short payment of duty. Further they came to know about the notification No.202/86 only when the Range Suptd. informed them about the same. We agree with the appellants that in the facts and circumstances of the case there cannot be suppression of facts on the part of the appellants as they had claimed the benefit of notification No. 175/86 and once its operation was suspended by notification No. 202/86 the department, while assessing the RT-12, should have pointed out the same and demanded the excise duty within the specified time under Section 11A. The demand is thus hit by time limit and accordingly the appeal is allowed.

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