

Crompton Greaves Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-31-1999

Reported in : (2000)(90)LC591Tri(Mum.)bai

Judge : J T J.H., G Srinivasan

Appellant : Crompton Greaves Ltd.

Respondent : Cce

Judgement :

1. These applications for condonation of delay of the supplementary appeals were allowed and delay condoned.

2. In the price lists filed by the present applicants deductions were claimed on account of various types of discounts including quantity discounts and cash discounts. The jurisdictional officers conducted a test check of the invoices issued by the assesseees which showed that such discount had not been passed on to the buyers. The assesseees were asked to show cause why the duty calculable on such discount not passed on should not be demanded from them. Before the Commissioner the assesseees claimed that in an earlier order on the same facts the appellate Collector's order had been upheld by the Tribunal and since the ratio of the judgments was in favour of the assessee, the allegations as to suppression could not sustain. Before the Commissioner the assesseees cited the Supreme Court judgment to the effect that the cash discount was deductible irrespective of the fact whether the individual customers availed of it or not. At the time of

personal hearing, other judgments holding the same view were also cited before the Commissioner. The Commissioner, however, relying upon some other case law dating in time prior to that cited, upheld the charges levelled in the show cause notice and confirmed demand amounting to Rs. 1,82,12,463.91, imposed a penalty of Rs. 50,00,000/-, confiscated the plant and machinery etc. and permitted its redemption on payment of fine of Rs. 10,00,000/-. Against this order the assessee filed appeals and the present applications for waiver of pre-deposit and stay of recovery of the duty and penalty.

3. We have heard Shri A. Hidayatullah, senior counsel appearing with Shri M.P. Baxi and Shri Mohan Saliyan, advocates, and Shri K.L. Ramteke for the Revenue.

4. The ground for raising the demand was a test check conducted by the department. The proceedings do not show as to how many invoices were subjected to such test. Shri Hidayatullah claimed that not only did the department not show the invoices to the assessee but also that the Commissioner did not take cognizance of those invoices shown by the assessee to him along with other documents such as credit notes which established the claim that the discounts as claimed had in fact been passed on to the assessee. Shri Hidayatullah also clarified that the quantity discounts referred to were in the nature of bonus discounts.

In that case the fact whether the discounts were actually passed on to the buyer or not would be known at a much later date and the actual availability thereof would not affect their deductibility in terms of the Tribunal judgment in the case of CCE v. Stallion Shox Ltd. .

5. On perusal of the judgments and on the basis of the facts narrated above, we find that a strong prima facie case has been made out by the applicant. We therefore grant unconditional stay and waiver of the duty confirmed and the penalty imposed.

6. As regards the plant and machinery confiscated, we permit the assessee to continue to use the same during the pendency of the proceedings before us subject to their giving an undertaking to the jurisdictional Commissioner to the

effect that they would not sell, lease or otherwise part with the plant, land, building etc. without the express permission of the Commissioner.

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