

Commissioner of Central Excise Vs. Amal Rasayan Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-22-1999

Reported in : (2000)(115)ELT580Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Amal Rasayan Ltd.

Judgement :

1. This appeal from revenue was argued by Shri Patwari. The respondent were represented by Shri Mayur Shroff, Advocate.

2. The Commissioner Central Excise, Vadodara vide the impugned order disposed of 4 show cause notices, in which the common allegation was made that "financial charges" at the rate of 2.31% collected by the assessee from the customers under their invoice over and above the approved price, were includible in the assessable value of the goods.

The extended period was also invoked in one of the 4 show cause notices that is dated 2-8-1995. Before the Commissioner the assessee cited the judgment of the Supreme Court in the case of GOI v. MRF -1995 (77) E.L.T. 433 in which it was held that interest on receivables was a deductible item. The Commissioner examined this claim and also various invoices and credit notes cited before him. His specific findings are as below: "I verified the invoices of the relevant period and I observed that the assessee charged and collected the amount as financial charges @ 2.31% in addition to the price of the goods mentioned in the said

invoices according to the price declared in their price lists. It is also admitted fact that the assessee has charged the financial charges at the aforesaid rate. According to the argument of the Ld.

Advocate on behalf of the assessee that the said amount is charged as financial charges on account of any payment under the invoices delayed beyond the normal period. Thus the argument of the Ld.

Advocate indicated that the amount recovered as financial charges is nothing but delayed payment collected in advance to safeguard the amount of interest to be recovered from the customers in case payment delayed beyond the normal period. It is also argued that in case where there is no delay in payment of sale of excisable goods and payment made within the normal credit period, under these circumstances the financial charges are reduced to the extent of delay and circumstances, the assessee returned the amount by demand draft to the customers. In case of delay beyond normal period, the assessee recovered the interest on delayed payment and the said amount has already been shown as expenditure for the interest paid to the loanee banks. I verified the evidence for return of such amount to the customers as well as payment of interest on loanee banks. I therefore, consider the amount return of such amount to the customers as well as payment of interest to the loanee banks. I therefore, consider the amount recovered as financial charges as amount of interest on delayed payment. It is not disputed that the assessee have recovered the interest on delayed payment at the rates mentioned in the documents, i.e. invoices for sale of excisable goods. It is also admitted fact that the said amount is not included in the assessable value declared by the assessee in their price lists. The normal price as stipulated in section 4 of Central Excises & Salt Act, 1944 is the price at which the goods are ordinarily sold in the wholesale trade at the time and place of removal at the factory gate. The interest collected on delayed payment is not certain but depending upon the time taken for recovery of the price of the excisable goods sold. This is the subsequent stage after the removal of goods from the factory. I also find that the amount of interest on delayed payment recovered is receipt for expenditure incurred as against interest of any loan payable. It, therefore, is obvious that the amount of interest recovered is not the amount which has been

received by the assessee in terms of any excisable goods manufactured and sold by the assessee to the buyers." 3. As regards the extended period the Commissioner observed that the various invoices were enclosed with the RT12 returns which were duly assessed by the department and therefore the department was not capable or alleging suppression etc. On this observation, the Commissioner dropped the proceedings initiated under the 4 show cause notices.

Thereafter in terms of direction made by the CBEC under 35E(1), the Commissioner filed the present application, which is treated as an appeal.

4. The claim made in the appeal memorandum strongly put forth by Mr.

Patwari during argument was that the financial charges were in fact an additional consideration in disguise. It is submitted that the period of delay in each case was different and therefore the claim that the flat rate of 2.31% was charged to all is wrong. It is pointed out that the invoice themselves shows that in case of delay, interest at the rate of 30% or 24% would be charged which further establishes that the financial charges were and surely not in the nature of delayed payment but were a separate consideration. As regards the extended period it is claimed that the requirement of filing the invoice along with the RT 12 returns came into effect only from 1-4-1994 and therefore prior to that date the department had no indication as to what the contents were of those invoices. On this ground the allegation as to suppression etc. is sought to be established.

5. Shri Shroff relies upon the finding of the Commissioner. It is his case that although the financial charges are charged at the uniform rate, in the event of prompt payment, they are refunded. It is his submission that the documents, which were indicative of such return, had been placed before the Commissioner and that only after due verification the Commissioner had accepted their claim. We find this claim to be debatable. We placed before Mr. Shroff a situation where the price list would indicate a specific discount for prompt payment.

In a situation as is before us, in this situation there is a likelihood of the assessee receiving a benefit by claiming that prompt payment discount as the money being refunded which was earlier collected as interest on delayed payment. Shri Shroff

submits that although such a possibility could exist in the present case, it does not form part of the allegation nor does it enter the deliberations at the original stage or at the appellate stage. We take this point.

6. Although it is correct that before a certain date it was not the requirement of the department that invoice be enclosed with the RT 12 return, a practice had developed where apart from the gate passes the assessing officer would examine some commercial invoices at random.

Since the Commissioner himself has observed that invoices were a part of the documentation of the RT 12 returns, it is apparent that the invoice were before the assessing officers also. We also take note of the submission that these facts were reflected in the replies to the questionnaire described by the department for the assessee filing the classification lists.

7. In the result the various arguments raised by the revenue stood replied in the impugned order itself. Upholding the impugned order, we dismiss this appeal.

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