SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Commissioner of Central Excise Vs. Schenck Avery Ltd.

Commissioner of Central Excise Vs. Schenck Avery Ltd.

SooperKanoon Citation : sooperkanoon.com/18284

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-16-2000

Reported in : (2000)(119)ELT582TriDel

Appellant : Commissioner of Central Excise

Respondent : Schenck Avery Ltd.

Judgement :

1. In these 5 appeals arising out of a common order-in-appeal Nos. 6 to 10/CE/DLH/2000, dated 16-5-2000 the issue involved is whether the Notional Interest earned on advances received by the respondents from their customers for execution of the orders is to be included in the assessable value of the excisable goods manufactured by them.

2. We heard Shri P.K. Jain, learned SDR for the Revenue and Shri Rakesh Roshan, Vice President of the respondent M/s. Schenck Avery Ltd. The Asstt. Commissioner has confirmed the demand of duty against the respondents by including the interest on the advances received from customers in the assessable value. On appeal the Commissioner (Appeals) set aside the adjudication order relying upon the decision of the Supreme Court in the case of VST Industries v. CCE, Hyderabad, 1998 (97) E.L.T. 395 (S.C.). In this case it was held that the commercial consideration for interpreting interest free deposit scheme was to cover the risk of credit sales extended to the bulk customers and there was nothing to show that there was any special consideration which was shown to the dealers who had given the security deposits. The Hon'ble Supreme Court,

therefore, held that the interest is not to be included in the assessable value. We find that the Commissioner (Appeals) has given a clear-cut finding that the goods manufactured by the appellants being tailor made goods as per the exact design and specification of the customers the advances were taken to safeguard their interest and there is no evidence to show that the presumed gain from the interest had led to the lowering of the assessable value. The Tribunal in a number of cases has held, following the Supreme Court's decision in VST Industries case, that a nexus has to be established between the advance and the price charged from him. It was held in Grasim Industries Ltd. v. CCE, Indore, 1999 (112) E.L.T. 492 that a manufacturer, to cover the risk of a particular buyer failing to take delivery of the goods, as a matter of trade practice, may insist on receipt of advance amount from the buyers. In such circumstances, without anything more, it cannot be inferred that the receipt of advance depresses the price to any extent.

The Revenue has not brought any evidence on record to prove that the value was depressed on account of receipt of advances. It has been also mentioned by the learned representative of the respondent that the Tribunal in their own case for the earlier period has rejected the appeals filed by the Revenue vide final order Nos. 54 to 71/2000-A, dated 6-1-2000. In view of this we find no reason to interfere with the impugned orders and reject all the 5 appeals filed by the Revenue.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com