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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-07-2000

Reported in : (2001)(74)ECC153

Judge : A T V.K., P Chacko

Appellant : Pearl Drinks Ltd.

Respondent : Cce

Judgement :

1. This is an application filed by M/s. Pearl Drinks (P) Ltd. for waiver of pre-deposit of Central Excise duty amounting to Rs. 34,78,331 confirmed and penalty Rs. 10,02,000 imposed by the Commissioner (Adjudication) under the impugned Order.

2. Shri M.A. Rangaswamy, learned Advocate, submitted that the Applicants manufacture aerated water viz., Pepsi, Team, 7 UP, Mirinda, Soda and Bag in Box Syrup; that in their price list they had claimed deductions on account of expenses incurred towards transportation container service and other service charges; that the price list after various enquiries by the Department was duly approved; that the method of valuation adopted by them had been in existence for a number of years; that though the duty was specified prior to 1.3.94, a show cause notice was issued to them on the question of assessable value for the purpose of determining whether they had exceeded SSI exemption limit of Rs. 15 lakhs; that the Principal Collector, Central Excise, New Delhi, under Adjudication Order No. 4189 dated

17.12.1989, had approved the method of calculation by them in arriving at the assessable value Under Section 4 of the Central Excise Act.

3. The learned Advocate further submitted that the show cause notice was issued to them for the period from March 1994 to March 1995 and the same was received by them in August 1995; that the demand was time barred as there was no adverse factor such as wilful mis-statement, suppression, etc., in view of the fact that clearances were effected by them as per practice followed since long and as approved by the department, and their price list had been approved; that all the deductions claimed by them were shown in the price list correctly; that as the deductions for transport charges had to be made on the basis of annualised average, the figures were given on average basis; that under their letter dated 30.5.94 addressed to the Asst. Collector they even suggested that the assessment may be made provisional as the deductions had been claimed on average basis; that they were clearing the goods to their duty paid godown which was not their depot. Finally, the learned Advocate claimed that if they are asked to deposit any amount towards duty or penalty it will cause them undue financial hardship as their current liabilities are more than assets.

4. Opposing the prayer, Shri Sanjeev Srivastava learned, D.R., submitted that it is not correct to say that the price list filed by them was approved after inquiries made by the Central Excise department. Inquiries caused by the department was only in respect of difference in the price of aerated water which was charged by them prior to 1.3.94 and the price after 1.3.94; that inquiry was conducted by the department in respect of sale of the aerated water entirely from their depot; that this is clear from the appellant's letter dated 1.6.1994; that the demand has been made from them as a consequence upon the introduction of ad valorem rate of duty in respect of aerated water the applicants increased their charges from Rs. 22.52 paise to Rs. 31.27 paise so as to claim deduction thereon and pay duty at lower assessable value; that the applicants claimed higher deduction than what were actually incurred. He also mentioned that larger period for demanding duty is invocable as the applicants resorted to suppression of facts and even furnished inflated figures in respect of expenses claimed as deductions.

5. We have considered the submissions of both the sides. The issue involved regarding valuation of the aerated water is an arguable issue which can be decided only after hearing the appeal in detail. The issue whether the extended period of limitation is invocable in the facts and circumstances of the case is prima facie in favour of the applicants.

In any case in view of Section 110 of the Finance Act, 2000 the demand for certain period is within the time limit specified Under Section 11A of the Central Excise Act. We are not convinced that directing the applicants to deposit any amount towards duty and penalty in terms of Section 35F of the Act will cause any undue financial hardship in view of the fact that the balance sheet for the year ending 31.3.2000 shows that they had earned profit before tax amounting to Rs. 3.72 crores.

They had declared interim dividend totalling Rs. 1.37 crores. In view of these facts and circumstances we direct the applicants to deposit Rs. 5 lakhs towards duty within 4 weeks from today. On complying with this direction there will be waiver of pre-deposit on remaning amount of duty and entire amount of penally. The matter will come up for reporting compliance on 13.12.2000.

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