

**M/S. S.M. Electronics Vs. Commissioner of Central Excise and**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Feb-26-2001

**Appellant :** M/S. S.M. Electronics

**Respondent :** Commissioner of Central Excise and

**Judgement :**

1. On hearing Shri S.S. Pathak, advocate for the applicant sand Smt.

Reena Arya for the Revenue, it appeared that for the following reasons the appeal itself could be taken up for disposal. This was done by granting waiver of pre-deposit of Rs. 8,91,842/- confirmed as duty and penalty of equal amount.

2. The department authorities examined the pattern of clearance of the goods produced by the assesseees. From the balance sheet they arrived at an assumed cost of production. They found that taking that assumed cost of production, the assesseees had under valued the goods substantially.

The demand for the differential duty was made. Before the Additional Commissioner it was claimed that the assesseees were trading in certain goods also which figures appeared in the balance sheet and therefore the costing arrived at by the department was defective. It was claimed that the claim of suppression etc. could not be made where the RT12 returns were scrutinized and finalized. They have also given the figures justifying their claim of trading activity. In spite of this, the Additional Commissioner confirmed the demand holding the extended period as applicable. The assesseees then filed an appeal. Vide an interim order

dated 29.12.1998 the Commissioner (Appeals) directed the assesseees to deposit certain amounts. In the face of the failure by the assesseees to comply with his directions, he dismissed the appeal vide the impugned order.

3. In the appeal memorandum the assesseees have repeated the claims.

Shri Pathak submits that there was a fire and the fire damaged goods were sold at a substantial discount. He submits that the interim order passed by the Commissioner was not received by him and therefore the question of compliance there with did not arise. He submitted that the assesseees had changed their postal address as was evident from column No. 5 in the appeal format before the Commissioner. The Commissioner had not sent the impugned order to their other address in Vasai. It was claimed that the interim order having been sent to wrong address must not have received by the appellants.

4. On examining the documents we find prima facie merit in the claims made on limitation as well as on non-receipt of the interim order. We therefore allow this appeal and remand the proceedings back to the Commissioner. He shall hear the appellants without insisting on any pre-deposit.

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