

interscape Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-17-2001

Appellant : interscape

Respondent : Commissioner of Central Excise,

Judgement :

1. Appeal taken up for disposal with the consent of both sides after waiving deposit.
2. In the order impugned in the appeal, the Commissioner holds that the goods cleared by the appellant in the financial year 1998-99 and 1999-2000 were not entitled to the exemption contained in notification 8/98 for the financial year 1998-99 and notification 8/99 for the year 1999-2000, for the reason that one of the conditions in each of these notifications, that the aggregate value of clearances of the manufacture during the preceding financial year has exceeded Rs 3.00 crores.
3. The balance sheet filed by the appellant for the year 1997-98 showed the value of clearances to be Rs 5.56 crores, and that for the next financial year to be Rs 11.27 crores. It is on this it has been concluded that the aggregate value exceeded Rs 3.00 crores. It was the contention of the appellant before the Commissioner that these figures in the balance sheet included in addition to be actual value of excisable goods that the appellant manufactured, receipts by it on account of works that it carried out which could not, by any stretch of imagination, be considered to be manufacture of excisable goods. These were such items as repair, renovation, civil works, electrical work, painting etc. It was also contended

that some of the goods were not excisable for the reason that they were immovable property, having been affixed to the earth, walls or floors, and that the value of such goods as doors and windows which were cleared at nil rate of duty should not be taken into account.

4. We put it to the representative of the appellant that the position with regard to the ineludibility of items attached to the earth is by no means settled. In other appeals filed by this appellant, this matter had come up and the matter has been remanded to the Commissioner to decide it. We also put it to him that it is not permissible to exclude the value of "bought out items", if these items formed part of the finished goods. In that case, their value would certainly be includible in the value of the finished goods. He contends that even by excluding the first item and including the second, the aggregate value of clearances fall short of Rs. 3.00 crores specified in the notification.

5. The Commissioner has not really her mind to the argument that were raised before her. The representative of the appellant says that he is prepared to show evidence in support of this claim that bills are made in the course of normal business and payment received by cheque. We are of the view that this aspect should have been considered by the Commissioner. She has however summarily dismissed the claim. The representative of the appellant says that while his submissions are complete, he will be happy to provide any clarification, explanation or additional details that the Commissioner may want.

6. Taking note of this offer, we set aside the impugned order and remand the matter to the Commissioner to adjudicate on the notices issued to the appellant in accordance with law.

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