

**Ece Industries Ltd. Vs. Cce**

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

**Decided On :** Mar-18-2002

**Reported in :** (2002)(81)ECC579

**Judge :** A T V.K., S Kang

**Appellant :** Ece Industries Ltd.

**Respondent :** Cce

**Judgement :**

1. In these three appeals, M/s. ECE Industries, have prayed for waiver of pre-deposit of Central Excise duty totally amounting to Rs. 85,49,430.73 paise and penalty amounting to Rs. 22 lakhs.

2. Shri V. Lakshmikuran, learned Advocate, submitted that the case of the Revenue is that the Applicants have effected duty payment through undervaluation of the bulbs and tubes, manufactured by them; that they have suppressed the real assessable value by way of recovery of extra amount over and above the prices declared in the price list filed by them by way of debit notes to cover services rendered by them; that the period covered is from May 1980 to October 1983 and the show cause notices were issued on 30.4.85, 9.2.87, and 21.10.87 invoking the extended period of limitation under Section 11A(1) of the Central Excise Act. He further, submitted that the valuation was done by the Applicants' in consonance with the law of the land at that time; that the Delhi High Court in the Applicants own case as Delhi has held that the Central Marketing Division through which they

sell the goods to the wholesale dealers is their part and is not a separate legal entity. But, since the wholesale cash price will only include the manufacturing cost and manufacturing profit after excluding the post-manufacturing expenses, therefore, it follows that the goods sold by Central Marketing Division to wholesale dealers should not be the criterion for determination of the assessable value.

Selling expenses being post-manufacturing expenses in nature are deductible from the assessable value. The learned Advocate also mentioned that while filing the price list which were approved, they had all along stated that the selling and distribution expenses are to be excluded; that the entire demand is time barred since they were acting in consonance with the law laid down by various High Courts including in their own matter at the relevant time while arriving at the assessable value of the products.

3. Opposing the prayer, Shri P.K. Jain, learned SDR, submitted that the Applicants had declared the assessable value for sale of the goods to independent buyers at factory gate but in fact there was no ex-factory sale; that the goods were transferred to their Marketing Division, Delhi and subsequently transferred to Depots for further sale at enhanced prices; that they recovered the extra amounts through debit notes which was never disclosed to Revenue; that the Applicants had not been able to establish any genuine sale at the factory gate to an independent buyer in the wholesale trade.

4. We have considered the submissions of both the sides. The learned Advocate has made out a strong prima facie case on the aspect of demand of duty being time barred. Accordingly we stay the recovery of entire amount of Central Excise duty and penalty during the pendency of the appeals. All the three appeals are posted for regular hearing on 8.4.2002.

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