Jai Corp Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-24-2002

Reported in : (2003)(159)ELT208Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Jai Corp Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The application is for waiver of deposit of duty of Rs. 29.43 lakhs and equal penalty.

2. The applicant uniformly charges customers 2% of the invoice price.

This is stated to be interest for delayed payment i.e. payment for the goods made beyond any day after the date of invoice. It is contended that part of the interest so collected is refunded in proportion to the date of duty. For example if the payment is made two days after the date of invoice interest to the extent of 33 days is returned.

3. Notice issued to the applicant proposed to add the interest to the assessable value of the goods on the ground that it was part of the consideration for the goods. In the impugned order, the Commissioner has not accepted the claim made by the applicant that the amount of interest had refunded in appropriate cases. She finds that there has not been sufficient evidence to show return of the

amount in all cases.

4. The contention of the applicant on merits is that the assessable value would be that payable at the time of removal and not a price which includes an element for charge for deferred payment. He relies upon the judgment of the Bombay High Court in Goodlass Nerolac v.U.O.I. - 1993 (65) E.L.T. 186. He further contends that the extended period of limitation within which the entire demand for duty fell, will not be available. The same Issue had been raised by notice issued to the applicant on 27-3-96 for a prior period and the Asstt. Commissioner had confirmed the demand on the ground that the amount is nothing other than interest.

5. The departmental representative relies upon the decision of the Tribunal in Kapoor Lamp Shade Co. v. CCE - 2001 (136) E.L.T. 376, we do not at this stage see its relevance to the facts before us. The ratio of the demand is that a notice issued later to the appellant before the Tribunal could not be considered to be barred on limitation solely on the ground that an earlier notice was issued. In coming to its conclusion, the Tribunal took note of the fact of difference in the allegation made in each of the notices. As early as 1996, the department was aware that the applicant before us was charging this amount. Therefore this fact being within the knowledge of the department from that time onwards any notice issued subsequently for a period subsequent to 1-3-86 cannot successfully allege that it had suppressed. Prima facie, therefore the availability of the extended period of limitation is debatable. In other words, it is difficult to see how the assessee could be accused of suppressing during a later period of the fact, the fact on which the department had already proceeded.

6. On this view, we waive deposit of the duty and penalty and stay their recovery.