

**Jbm Auto Components Ltd. Vs. Cce**

**Jbm Auto Components Ltd. Vs. Cce**

**SooperKanoon Citation :** [sooperkanoon.com/29422](http://sooperkanoon.com/29422)

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

**Decided On :** Nov-22-2002

**Reported in :** (2003)(85)ECC637

**Judge :** P Chacko

**Appellant :** Jbm Auto Components Ltd.

**Respondent :** Cce

**Judgement :**

1. In this application, the prayer is for waiver of pre-deposit and stay of recovery in respect of an amount of duty of Rs. 36,222 and an amount of penalty of Rs. 50,000.

2. Certain quantity of excisable goods manufactured by the applicants was intercepted in transit by the officers of central excise on 26.2.99. Five invoices were produced by the applicants to the officers.

Two of these invoices were dated 19.2.99, two other invoices dated 25.2.99 and the fifth was dated 26.2.99. The goods covered by the 5 invoice was released forthwith to the appellants. The department alleged that the goods covered by the other 'pre-dated invoices' were being clandestinely removed. The allegation was denied. In adjudication of the dispute, the jurisdictional Dy. Commissioner imposed a penalty of Rs. 50,000 on the applicants under Rule 173Q, apart from confirming demand of duty to the extent of Rs. 36,222 on the seized goods (covered by the

four 'pre-dated invoices') provisionally released.

3. Ld. Consultant for the applicants submits that the goods covered by the four 'pre-dated invoices' and seized by the officers had not, in fact, been despatched on the dates of the invoices and that, on account of a procedural error, the dates in all the invoices could not be corrected at the time of dispatch of the goods on 26.2.99.

4. Ld. DR, on the other hand, submits that there has not been any satisfactory explanation before the adjudicating authority or the first appellate authority regarding this procedural error. Therefore, according to Ld. DR, the allegation of clandestine removal has not been successfully rebutted in this case.

6. I find that there is greater force in the point made by the DR than in that put forth by the Ld. Consultant. Prima facie case appears to be leaning towards the Revenue. There is no plea of financial hardships in the present application.

7. Keeping in view all the above aspects, I direct the applicants to pre-deposit a sum of Rs. 25,000 under Section 35F of the Central Excise Act within a period of two weeks from today and report compliance on 20.12.2002.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**