J.K.B.M. Ltd. Vs. Commissioner of Central Excise

J.K.B.M. Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/30735

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-29-2003

Judge : A Wadhwa, S T S.S.

Appellant : J.K.B.M. Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides, represented by Shri. J.C. Patel, learned Advocate and Shri S.S. Bhagat, learned S.D.R., we find that the duty has been confirmed against the appellants by disallowing the deduction on account of service charges, transport charges and handling charges claimed by the appellants from their depot sale price.

2. Shri Patel submits that transportation charges and handling charges are admissible deductions in view of the fact that they are post clearance expenses. He also submits that the demand of duty is barred by limitation inasmuch as the Show Cause Notice for the period April 1994 to September 1995 was issued on 04/02/1997.

3. He draws our attention to the Show Cause Notice and submits that it is admitted by the Revenue that the appellants had filed the price list claiming the said deduction and the requisite return alongwith the invoice were being filed by the appellants to their jurisdictional Central Excise authorities. In fact, Show Cause Notice proceed on the basis of scrutiny of invoices filed by them. In this

circumstances, the learned Advocate states that there is no question of suppression or misstatement with intent to evade duty. In this circumstance, notice issued after normal period of limitation is barred under Section 11A.He further states that though this plea was raised before the Commissioner, he has not dealt with the same.

4. Shri S.S. Bhagat, learned S.D.R. submits that inasmuch as Commissioner has not considered the appellants plea of limitation in the facts of the case, matter be remand to the Commissioner.

5. We find force in the contention of the S.D.R. we find from the impugned order that though the plea of limitation was raised by the appellants but the same has not been considered. We set aside the impugned order and remand the matter back to the Commissioner for decision on the point of limitation. We make it clear that we are not deciding the other issues on merit and the same are left open for the Commissioner for decision in remand proceedings. Appeal is thus allowed by way of remand.