

Vijay Tanks and Vessels Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-10-2003

Reported in : (2003)(88)ECC830

Judge : K Usha, N T C.N.B.

Appellant : Vijay Tanks and Vessels

Respondent : Cce

Judgement :

1. The appellant is manufacturer of iron and steel drums and containers. The said manufacture is on job work basis for M/s. IOC Ltd. The present appeal relates to the demand for duty short-levied on account of alleged undervaluation of the containers so manufactured and supplied to IOC Ltd. The demand is for the period April 1996 to January 2001 and Show-cause Notice was issued on 15.4.2001.

2. The contention of the appellant is that the demand has been raised beyond the period of limitation provided in Section 11A of the Central Excise Act. It has been submitted that the normal period provided under Section 11A is only six months and the extended period of five years is available only in exceptional circumstances involving fraud, collusion, suppression of facts or misstatement of facts with intent to evade payment of duty. The appellant's submission is that in the present case the full facts covering the transaction between the parties were known to the jurisdictional Central Excise Officers and they had issued several Show-cause Notices within the normal period. It is submitted that, in such a

situation, where facts were known to jurisdictional authorities and those authorities had initiated action again to recover the alleged short-levies, there was no justification in the Commissioner to invoke the extended period as provided in the proviso to Section 11A and demand duty for the period of 5 years. During the hearing of the case, the learned Counsel for the appellant look us through the relevant records and pointed out that the appellant had specifically brought to the notice of the Commissioner in their reply to the Show-cause Notice that Show-cause Notices issued by lower authorities on the subject, were pending decision before the jurisdictional Deputy Commissioner or Assistant Commissioner. According to the learned Counsel, in the above circumstances, the impugned order is required to be quashed on the ground of limitation alone. He also submitted that since earlier show-cause notice issued by the jurisdictional authorities remained superseded by the subsequent notice for the extended period issued by the Commissioner, the proceedings could not be taken under those Show-cause Notices also.

3. Learned SDR has submitted that there was no ground for treating the Show-cause Notices which were issued during the normal period as having lapsed. He also pointed out that such a course would lead to loss to revenue, since the appellant's Cost Accountant himself admitted the short-levy on account of improper calculation of assessable value.

4. We have perused the records and have considered the submissions made by both sides. The appellant's objection on the ground of limitation is well taken and is required to be accepted. When Show-cause Notices had been issued by the jurisdictional Deputy Commissioner/Assistant Commissioner within the normal time provided for issue of such notices under Section 11A(1) of the Central Excise Act, the issue of a consolidated show-cause Notices for the extended period of 5 years by the Commissioner was superfluous and illegal. Maybe, the right hand does not know what the left hand had already done. That notices were pending on the very issue is clear from the following statement in the appellant's reply to the Show-cause Notice issued by the Commissioner: "It is worthwhile to mention that we have received a number of Show-cause Notices on the same issue for decision by the Dy. Commr.

or Asst. Commr. for the periods of 1995 to 1998. Despite our making written submissions against each of the Show-cause Notices, none of them were either heard or decided. As such, we had no opportunity to obtain an acceptable solution to the instant dispute in determining the assessable value of manufactured empty metal containers out of Cost of Production through the adjudication process or otherwise.

The instant SCDN although not referring to the previous show-cause Notices, is considered by us as issued in supersession of the previous show cause notices issued on the same matter and period in part." 5. In view of the above, the impugned show-cause Notice and order are quashed as superfluous and not maintainable on the ground of limitation.

6. We, however, find no merit in the appellant's claim that the Show-cause Notices which had been issued within normal period by the jurisdictional Deputy Commissioner/Assistant Commissioner cannot be adjudicated by the authorities. The issue of a second notice quite unnecessarily issued by the Commissioner does not affect the validity of the notices which had been issued by competent jurisdictional authorities within the time limit provided under the statute. We, therefore, make it clear that our order in the present appeal does not, in any way, affect the pending notices. The authorities shall be at liberty to proceed with the adjudication of those notices. In fact, they should do so as expeditiously, since those notices are pending adjudication for seven years.

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