

Sterlite Optical Technologies Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-23-2003

Judge : J Balasundaram, S T S.S.

Appellant : Sterlite Optical Technologies

Respondent : Commissioner of Central Excise

Judgement :

1. After hearing both sides for sometime on the application for waiver of pre-deposit of duty and penalty, we find that it was possible to decide appeal itself at this stage. We, therefore, proceed to hear both sides and dispose of the appeal.

2. The brief facts of the case are the appellants herein are engaged in the manufacture of excisable goods viz. optical fibre and optical fibre cables. They clear the optical fibres to their other units/subsidiary units. The assessable value of the goods used/consumed by them was required to be determined on the basis of value of comparable goods manufactured by themselves or by any other manufacturer. The Department found that price charged to independent buyer for the same goods was higher than the price charged to their own units. They paid Central Excise duty on weighted average price of the goods equal to independent buyers which was lower than the value charged to independent buyers which resulted in under valuation and short levy of duty of Rs. 34,80,214/-. It was also found that deduction was claimed on account of freight which appeared to be incorrect as the amount of freight and other charges incurred till the delivery of goods at customers sites was required to be included in the assessable value of

the goods. This resulted in short payment of duty of Rs. 26,92,008/-. The show cause notice was therefore issued to the appellants on 23.10.2001 covering the period 1.10.96 to 30.6.2000, invoking proviso to Section 11A(1) of the Central Excise Act, proposing recovery of duty totaling Rs. 61,72,222/- and proposing penalty on the company under Section 11AC of Rule 173Q. The Assistant General Manager of the Company was also asked to show cause against imposition of penalty under Rule 209A of the Central Excise Rules, 1944. The Notice was adjudicated by the Commissioner of Central Excise who confirmed the total demand and imposed penalty of equal amount upon the Company. However, she dropped penal action against the Asst. General Manager. Hence this appeal by the Company.

3. On hearing both sides and noting that the appellants sought adjournment of the hearing fixed on 30th July 2002 on the ground that their Chartered Accountant was appearing in an appeal before the Tribunal on 29th July and 30th July 2002, which adjournment request was rejected by passing ex-parte Order, we agree with the appellants that the Order has been passed in violation of the principles of natural justice as sufficient opportunity was not extended for hearing. We also note that Tribunal's Order in the case of Escorts JCB Ltd. 2000 (118) ELT 650 (T) and larger bench decision in the case of Commissioner of Central Excise, Meerut v. M/s. Prabhat Zarda Factory - 2000 (199) ELT 191 upholding the decision relied upon by the Commissioner for holding that the deduction on account of freight was not admissible has been reversed by the Supreme Court by its order dated 22.10.2002.

4. Therefore, we set aside the impugned order and remand the case to the Jurisdictional Commissioner for fresh order. She shall extend a reasonable opportunity to the appellant of being heard and explaining their defence.

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