

**Narendra and Co. Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/31558](http://sooperkanoon.com/31558)

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

**Decided On :** Jul-11-2003

**Reported in :** (2003)(90)ECC563

**Judge :** S Kang, N T C.N.B.

**Appellant :** Narendra and Co.

**Respondent :** Cce

**Judgement :**

2. Appellants filed this appeal against the order in appeal passed by the Commissioner (Appeals).
3. The appellants engaged in the manufacture of Gun Powder, Slurry and Safety Fuse and clearing the goods on payment of duty. A show cause notice was issued to the appellants on the ground that appellants deliberately mis-declared the price lower than the price actually charged from the customers in their invoices and this was done by the appellants to evade payment of duty.
4. The contention of the appellant is that the impugned order was passed in violation to the principles of natural justice. No opportunity of hearing was given to them the relied upon documents were also not supplied.
5. We find that the adjudicating authority supplied the relied upon documents on 4.2.2000 which was duly acknowledged by the appellants.

The appellants also received other documents on 16.4.2001 and the adjudicating authority also fixed the case for personal hearing which was duly conveyed to the appellants. We further, find that the Commissioner (Appeals), also on receipt of the order passed by the Hon'ble High Court, with the direction to decide the appeal within 10 days, granted personal hearing to the appellants. The appellants send a telegram on 23.1.2002 and made a request to decide the appeal on merits. In these circumstances, we find no force in the arguments of the appellants that lower authorities passed the order in violation of principles of natural justice.

6. The appellants also pleaded that a demand is time barred as appellant never suppressed the facts from the Revenue. We find that appellants had never declared to the Revenue regarding the excess amount they are receiving, therefore, this argument is also without merit.

7. On merit, the contention of the appellant is that they were receiving the amount from their customers which were due to them and were wrongly mentioning as a freight charges.

8. We find from the evidence on record that the appellants sold 12 packages of Safety Fuses to M/s Aparna Explosive and in an invoice they had mentioned the duty-cum-price of Rs. 7248. In the invoice, they had mentioned the Van hiring charges at the rate of Rs. 4752 but in the delivery Challan in respect of same goods, the appellants mentioned price of Rs. 1000 per package which comes to Rs. 12,000. The goods were collected by the customers from the factory Gate and in fact, no charges were made by the appellants in respect of transportation. This Modus Operandi was adopted by the appellants in respect of the goods cleared from the factory. Further, we find that Shri Dinesh Jain, proprietor of the Firm in his statement dated 30.11.99 admitted the facts that for the same consignment they were preparing two sets of documents i.e. one set of invoice which shows lower price and another Challan showing the actual price. It also came on record that the suppressed price of goods was received by the appellant in the name of Shri Dinesh Jain, proprietor of the Firm. In these circumstances, we find no merit in the appeal. The appeal is dismissed.