Spl Ltd. Vs. Commissioner of Central Excise

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SooperKanoon Citation : sooperkanoon.com/33770

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-13-2004

Reported in : (2004)(168)ELT351TriDel

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

Appellant : Spl Ltd.

Respondent : Commissioner of Central Excise

Judgement :
1. Challenge in this appeal at the instance of the assessee is against the order passed by the Commissioner dated 12-6-2003, Under the above order the Commissioner confirmed a demand of Rs. 1,56,955/- on the ground that the appellants were paying excise duty on the lower amount/value than the actual MRP due to rounding off the same to the nearest lower rupee. He imposed a penalty of equal amount under Section 11AC and directed payment of interest in terms of Section 11AB.2. The appellant had submitted a detailed reply to the show cause notice in respect of the allegation regarding paying excise duty on lower amount than actual MRP. The appellant contended that it happened because the MRP was rounded off to the nearest rupee. But while rounding of sometimes it goes on the higher side of MRP also. If total duty paid on such exercise is taken into consideration, it will be revealed that the appellant had paid more duty than what was actually required to be paid and that the appellant is entitled to refund. It was contended that such rounding off was not done with intent to evade payment of duty and therefore, the extended period of limitation cannot be invoked and no

penalty could be imposed. During the course of personal hearing on 29-1-2003, the appellant submitted a statement showing the rounding off of MRP on both sides and explained that no revenue loss had happened. A copy of the above submission is produced before us by the appellant.

3. On going through the impugned order, we do not find that the Commissioner had considered the above contention of the appellant that due to this method of rounding off on many occasions duty has been paid in excess of what is actually due on the basis of MRP. We heard the learned counsel for the appellant and the learned DR. On the basis of the statement filed by the assessee before the Commissioner, copy of which is made available to us, we find that due to this exercise of rounding off of MRP on the higher side the appellant had paid an amount of Rs. 1,61,878/- in excess of excise duty due on the MRP without being rounded off. On the other hand, the duty alleged to be short levied due to rounding off of MRP on the lower side is computed as Rs. 1,56,955/-.

If that be so, the appellant has paid an amount of Rs. 4,924/- in excess of duty actually due on the MRP.4. In the light of the above, we find that the order impugned cannot be sustained. We, therefore, set aside the order and allow the appeal. The appellant will be entitled to refund of amount of Rs. 4,924/- in accordance with Rules.