

**Jindal Strips Ltd. Vs. Cce**

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

**Decided On :** Apr-20-2004

**Reported in :** (2004)(94)ECC433

**Judge :** A T V.K., P Bajaj

**Appellant :** Jindal Strips Ltd.

**Respondent :** Cce

**Judgement :**

1. This appeal has been directed against the impugned Order-in-Appeal vide which the Commissioner (Appeals) has affirmed the Order-in-Original of the adjudicating authority who confirmed the duty demand of Rs. 6,26,355 with penalty of equal amount against them. The appellants are engaged in the manufacture of Hot rolled SS Flats and HR SS Coils. On conducting physical verification of their finished goods as well as raw material by the Central Excise officers on 17th and 18th September 2001, shortages of finished goods involving Central Excise duty of the above amount was found. They debited the duty voluntarily.

After issuance of show-cause notice, the adjudicating authority affirmed the duty with equal amount of penalty detailed above. The Commissioner (Appeals) has affirmed that order.

2. The learned Counsel has contended that shortage was not arrived at by taking out physical verification of the stock of finished goods. It was based only on eye

estimation. He has also contended that duty amount has also not been worked out in accordance with the assessable value of goods as shown in the invoices. Therefore, the impugned order deserves to be set aside. The learned Counsel has also argued that penalty imposed in on a higher side and deserves to be reduced, if not totally set aside.

3. On the other hand, the learned SDR has reiterated the correctness of the impugned order.

4. We have heard both the sides and gone through the records. So far as the first contention of the Counsel that shortage of the finished goods had been arrived at only on eye estimation and no physical verification of the goods was carried out is concerned. The same cannot be accepted at all. The perusal of the record shows that the verification of the goods was conducted by the officers of the Central Excise, in the presence of Shri R.K. Gupta, General Manager of the appellants and he admitted the shortage in his statement and on his admission, the appellants voluntarily debited the duty amount vide PLA. This admission was never retracted by Shri R.K. Gupta on the ground of having been taken under duress, coercion. The Panchnama was also signed by him after understanding its contents. Therefore, it is difficult to accept that the shortage was based only on eye estimation and was not correctly arrived at. The appellants are bound by the admission made by their General Manager and it is well settled that admitted facts need not be proved. The fact that the appellants voluntarily debited the duty involved on the goods, also goes a long way to prove that they accepted the method/norm adopted by the officers for arriving at the shortage of the goods.

5. However, we find that the assessable value as detailed in two Invoices J-3 and J-4 placed on record by the appellants, had not been taken into consideration while working out the duty involved in the shortage of goods. The duty involved on the goods detailed in these two invoices deserves to be re-worked out after taking into account the assessable value of the goods detailed therein. Therefore, the duty amount involved in these two invoices is not confirmed but is left to the adjudicating authority to re-determine. But the duty in respect of goods of other invoices involved, is upheld as no defect in the same has been pointed out by the

Counsel.

6. However, keeping in view the facts and circumstances of the case and that the appellant had deposited the duty before issuance of show cause notice, the penalty is reduced to Rs. 1 lakh. Except for the above said modifications the impugned order is upheld. The appeal of the appellants accordingly stands disposed of.

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