

**Dynamic Electricals Vs. Cce**

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

**Decided On :** Oct-15-2004

**Reported in :** (2005)(118)LC218Tri(Delhi)

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

**Appellant :** Dynamic Electricals

**Respondent :** Cce

**Judgement :**

1. In this appeal filed by M/s. Dynamic Electricals the issues involved are whether the price realized by them should be treated as cum-duty price, and whether the interest on duty is payable by them.

2. Shri V.K. Gupta, learned Advocate, submitted that the Department has confirmed the demand of duty and imposed penalty and demanded interest on the ground that they were clearing wires and cables bearing the brand name of other person; that the Department has also not treated the price realized by them from their customers as cum-duty price; that it has been held by the Larger Bench of the Tribunal in the case of Srt Chakra Tyres v. CCE that the amount realized from the customers has to be treated as inclusive of the duty element; that the said Larger Bench decision is consistently being followed by the Tribunal and the appeal filed by the Revenue has also been dismissed by the Supreme Court as reported in (165) ELT A 175 (SC). He also relied upon the Judgment of the Supreme Court in the case of CCE, Delhi v. Maruti Udyog Ltd. . The learned

Advocate, further, submitted that the Appellants were manufacturing and clearing branded goods as well as unbranded goods and were availing the SSI Exemption benefit; that in a case where the assessee avails of SSI Exemption benefit the payment of fortnightly duty cannot be fastened upon them; that therefore, any calculation of interest on fortnightly basis is absolutely wrong. Finally he submitted that as there was no mala fide intention no penalty is imposable on the Appellants.

3. Countering the arguments Smt. Krishna A. Mishra, learned SDR, submitted that as the Appellants had cleared the branded goods without payment of duty penalty is imposable on them. She finally submitted that as SSI Exemption benefit is not available in respect of branded goods the Appellants cannot be treated as SSI unit for the purpose of branded goods, and therefore, calculation of interest on fortnightly basis is within the purview of law.

4. We have considered the submissions of both the sides. The Supreme Court in the case of Maruti Udyog Ltd. (supra) has held that "when cum-duty is charged, then in arriving at the excisable value of the goods the element of duty which is payable has to be excluded. The Tribunal has, therefore, rightly proceeded on the basis that the amount realized by the Respondents from the sale of scrap has to be regarded as a normal whole sale price and in determining the value on which the Excise duty is payable the element of excise duty must be regarded as having been incorporated in the sale price must be excluded. There is nothing to show that once the demand was raised by the Department, the Respondents sought to recover the same from the purchaser of the scrap." This decision squarely applies to the facts of the present matter since the Appellants had cleared the branded wire and cables without payment of duty and the price realized by them has to be treated as cum-duty price out of which the statutory deduction on account of duty has to be allowed for determining the assessable value.

On this aspect the appeal is allowed.

5. We agree with the submission of the learned SDR that penalty is imposable on the Appellants since they had cleared the branded goods without payment of duty. The benefit of SSI Exemption is not available if the goods bear the brand name of another persons. Accordingly we uphold the amount of penalty imposed on them.

We also agree with the submissions of the learned SDR that interest is chargeable on fortnightly basis. During the relevant period Rule 8 of Central Excise Rules (No. 2) Rules, 2001 provided that the duty on the goods shall be paid on fortnightly basis. Second proviso to Rule 8(1), however, provided that where an assessee is availing of Exemption under a notification based on the value of clearance in a financial year the duty on goods cleared during a calendar month shall be paid by the 15th day of the following month. The provisions of this proviso are applicable to the Assessee availing of the SSI Exemption. In the present matter the branded goods are not covered by the SSI Exemption Notification and as such the duty has to be discharged on fortnightly basis. Accordingly the interest is also to be paid on fortnightly basis. The appeal is disposed of in the above terms.

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