C.C. and C.E., Vs. Shri Valsad Sahakari Khand Udyog

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SooperKanoon Citation : sooperkanoon.com/40399

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-28-2005

Judge : A Wadhwa, A M Moheb

Appellant : C.C. and C.E.,

Respondent : Shri Valsad Sahakari Khand Udyog

Judgement :

The Sugar Industries Federation, filed a case against the Ministry of Food for increase in the levy price during the period from 1974-75 to 1979-80. The Apex Court's judgment came in favour of the federation in the year 1993. Accordingly the Ministry of Food distributed the amount calculated as per the differential amount of levy price of the sugar during the said period and distributed the same in the year 1996-97 (Dec. 1996). The Revenues contention is that the assessee were required to pay Central Excise duty on the differential price received by them from the Ministry of Food. The assessees did not do so. They also failed to inform the department that they received an amount of Rs. 30,99,425/-. From the said Ministry.

2. A show cause notice dated 23-3-98 was issued to them for recovery of Rs. 4,16,209/- calculated on the differential amount the assessee received from the Ministry of Food, invoking extended period of limitation on the ground that the assessee suppressed facts of receipt of such sum. The Jurisdictional Deputy Assistant Commissioner confirmed the demand and also imposed equivalent penalty. Aggrieved by such an order, the appellant appealed to the Commissioner

(Appeals) against the OIO".

3. The Commissioner set aside the demand on the ground of limitation.

Revenue's is aggrieved that the Commissioner has set aside the demand holding that the fact of receipt of extra amount by the assessee was known to the Department. No intimation to this effect was received in the Range office. The assessee working under SRP should take all care to keep the Department informed of all extra considerations received by him and in the present case he has failed to do so. The Revenue contends that larger period of limitation is invocable.

5. Revenue's contention that the respondent suppressed the fact of receipt of extra consideration for the levy sugar from the Government is not borne out by facts. The Ministry of the Food letter dated 25-9-96 conveying the sanction of the President of Rs. 30,99,425/- was endorsed to the Range Supdt. On receipt of this letter if any action is required to be taken if should have been initiated by the Department.

Having failed to do so. The department seeks to invoke larger period of limitation accusing the assessee of suppressing facts. Not permissible.

Demand is time barred as held by the Commissioner. The appeal is rejected.