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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-19-2005

Judge : R Abichandani, M T K.C.

Appellant : Sangam Structurals Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The demand was based on an allegation that the appellants suppressed the value of the goods by not including the higher rate of interest that is at 18% prevailing in the market as against 10% given by them on the advance amount. It is a settled legal position that the mere fact of making interest free advance by a buyer to the manufacturer, by itself will not be a sufficient ground to reload the assessable value with notional interest and that it was necessary for the Revenue to show that such advance had influenced in the lowering of the price.

There is no allegation that there was any lowering of the price due to such advance. The Supreme Court in Commissioner of Customs, Mumbai-III v. ISPL Industries Ltd. the Board's circular dated 22.6.98, observed in paragraph 11 of the judgement that as per clause (iii) of that circular (reproduced in paragraph 9 of the judgement) it was directed that if there was no different in the selling price for both categories of the wholesale buyers and there was also no proof that on account of advance deposits taken from some buyers, the price charged from all buyers had been reduced and that element of notional interest on advance deposits cannot be added. In the present case, there is no allegation that there were two prices on for

those who had made the advance and the other who had not. As observed by the Supreme Court in paragraph 11, there may be different reasons for taking advance. In paragraph 8 of the judgement of the Supreme Court it was held that one of the relevant factors would be as to whether the price is affected by the fact of interest free advance or remains uniform for all. If the price is not influenced by the fact of interest free advance, there would be no reason to contend that the price charged uniformly from both sets of the buyers would still not be a normal price.

2. In our view, therefore, the appellant has made out a case for waiver of pre-deposit. The impugned order is, therefore, stayed during the pendency of the appeal. The appeal will come up for final hearing in due course. This application stands disposed of accordingly.

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