

Commissioner of Central Excise Vs. Jet Speed Audio Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-25-2005

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Jet Speed Audio Pvt. Ltd.

Judgement :

1. A Revenue's appeal against the order of the Commissioner of Central Excise (Appeals), Mumbai. Brief facts are narrated below.

2. Jet Speed Audio (P) Ltd. (JSAPL) manufacture recorded audio cassettes (RCs) falling under Chapter Heading 8524.32 of the Schedule to CETA, 1985. On 18-12-97, the Officers of Central Excise intercepted a tempo carrying 139 cartons of recorded audio cassettes. The cartons contained 27800 Nos of recorded cassettes duly packed in book case inlay card covers (IC covers). These inlay card covers are made of polypropylene. The goods in question were consigned to M/s. Magna Sound (I) Ltd. Investigation revealed two aspects - (a) the IC covers in which the RCs were packed were supplied by M/s. Magna Sound to JSAPL and (b) JSAPL has not included the cost of these IC covers in the assessable value of the audio cassettes. The RCs numbering 27800 were seized as they were found to have been under valued. During the course of investigation statements of the officers of both JSAPL and M/s.

Magna Sounds were recorded and the officers of both the companies admitted that recorded cassettes cannot be sold without the information contained on the IC covers. On the basis of this and further information collected from M/s. JSAPL it was found that during the period March, 1997 to December, 1997 M/s. JSAPL produced 13,38,700 Nos.

of recorded audio cassettes. It is admitted by M/s. JSAPL that they have not included the cost of IC covers in the assessable value of the RCs. A show cause notice dated 9th June, 1998 was issued to M/s. JSAPL demanding differential duty amounting to Rs. 3,48,062/- on this account, proposing confiscation of seized RCs, penalty on both the consignor and consignee, confiscation of the vehicle and penalties on the employees of the company who were responsible for under valuation of the said goods and consequent evasion. Interest was also proposed to be charged on the duty sought to be evaded.

3. The Deputy Commissioner who adjudicated the case confiscated the seized goods, held that M/s. JSAPL undervalued the goods in question in connivance with M/s. Magna Sounds imposed penalties on both of them, on the Director of M/s. JSAPL, demanded differential duty amounting to Rs. 3,48,062/- (Duty calculated after including the cost of IC covers in the assessable value of the RCs) from M/s. JSAPL. He imposed a penalty of Rs. 50,000/- on one M/s, Suma Plastics who manufactured the 1C covers and supplied them to M/s. JSAPL and further imposed a penalty of Rs. 25,000/- on the partners of M/s. Suma Plastics.

4. In appeal the Commissioner of Central Excise (Appeals) set aside the order of the Deputy Commissioner. The Commissioner's reasoning was : (a) The show cause notice is barred by limitation inasmuch as it was issued on 9-6-98 covering a period March, 1997 - December, 1997 alleging that M/s. JSAPL undervalued the RCs. But the same issue in respect of the same assessee was the subject-matter of another notice dated 5-11-97 by which the appellants were asked to show cause why the cost of IC covers should not be included in the value of RCs. This notice itself arose out of a price declaration filed by M/s. JSAPL stating, "Also we receive packing material i.e. inlay covers from one or two parties and the value of the same does not form part of the assessable value". The Commissioner held

that since this notice has been issued and is pending adjudication, the Department cannot issue another show cause notice on the same issue invoking larger period of limitation.

(b) On merits the issue whether packing material supplied free of cost by a customer should be included in the assessable value of the final product is covered in favour of the assessee in the case of Hindustan Polymers v. CCE relied on the decision of the Bombay High Court in the case of Govind Pay Oxygen v. Assistant Commissioner .

(c) RCs are marketable even without IC covers as evidenced by two buyers of RCs who stated that they buy the same goods even without IC covers, 6. The Id. SDR, Shri Ajay Saxena represented the Revenue and Shri Majyur Shroff with Mehul Shah represented M/s. JSAPL, Shri M.K. Shah for M/s, Suma Plastics and Suresh Makhija its Partner and S. Patwari, CA stood in for M/s. Magna Sound.

8. The Revenue does not deny that the Department issued a show cause notice on 5-11-97 to M/s. JSAPL on the issue of addition of cost of IC covers to the assessable value of RCs. We take this as an admission on the part of the Revenue that a notice was issued on the same subject to M/s. JSAPL. We are unable to see any merit in the contention of the Revenue that since RCs were seized in December, 1997 on the allegation that they were undervalued (non-inclusion of cost of IC covers, resulted in undervaluation, according to the Department), the Department could invoke larger period of limitation even when a show cause notice on the same issue was pending adjudication. Normally, a seizure of excisable goods would lead to investigation, which in turn reveals the past deeds of an assessee. The larger period of limitation can be invoked in such cases. Here the facts are different. Recorded cassettes were seized in December, 1997 on the ground that they were undervalued. The Department can proceed against them along with other goods, which were similarly removed during the normal period of limitation. The notice issued in June, 1998 cannot allege suppression when the Department was already aware of the fact that the cost of IC covers was not included in the assessable value of the RCs when a show cause notice issued in same subject is pending adjudication.

9. Having said that, we also observe that the show cause notice is not entirely barred by limitation inasmuch as it covers the month of December, 1997, which is within the normal period of limitation considering the fact that the notice was issued on 9-6-98. Since the 'normal period' has to be computed from the date of filing of return (RT 12), whether November, 1997 clearances would be covered or not depends on the date on which the respondents filed their return for November, 1997. This aspect will have to be looked into by the lower authorities.

10. In regard to merits, the Commissioner applied the ratio of Hon'ble Supreme Courts decision in M/s. Hindustan Polymers and the decision of Bombay High Court in Govind Pay Oxygen cited supra. Both these decisions are not on the same issue, as we have on hand. The ratio of the decision in Sagarika Acoustronics Pvt. Ltd. - is directly on the point. The Tribunal in the above cited decision held that inlay cards and screen printing frames supplied free of cost by the customers for manufacture of pre-recorded cassettes have to be included in the assessable value of the said cassettes. To a pointed question by the Bench, the Respondents agreed that arrangement between the M/s. JSAPL and their customer M/s. Magna Sound is on principal-to-principal basis but M/s. JSAPL is discharging the duty on the RCs in the capacity of a job worker. This case therefore stands on the same footing as that of Sagarika Acoustronics. It is evident that M/s. Magna Sound buys the IC covers from M/s. Suma Plastics and supplies them to M/s. JSAPL who in turn uses them in the manufacture of RCs. We reject the plea that RCs can be cleared without IC covers as they are merely packing material. If that were to be the case, there is no need for the appellants to have covered the RCs with the IC covers at the time of clearance as is evident from the fact that the RCs did have the IC covers when they were seized by the Department on 18-12-97.

The Commissioner's contention that RCs can be marketed without IC covers is not well founded. Normally, RCs are sold with inlay card covers. The Commissioner's reliance on the letters written by some stray parties in preference to the respondents' own version that RCs are sold with inlay card covers is not sustainable. The Department's contention that the cost of IC covers has to be included in the assessable value of RCs will have to be upheld.¹¹ The

Commissioner has set aside the penalty imposed on M/s. Suma Plastics, who manufactured the IC covers and seemed to have supplied them to M/s. JSAPL at the instance of M/s. Magna Sound. The Revenue is in appeal against this decision of the Commissioner as well. We see no justification in imposing any penalty on either the partner of M/s.

Suma Plastics or the firm itself, as they are in no way connected with the undervaluation of goods which they do not manufacture. Revenue's appeal against this part of the order has to be therefore rejected.

12. In so far as Magna Sound is concerned, we observe that they are the direct beneficiaries of this arrangement. However, it is the manufacturer of goods who has to determine the value of the goods. Even if Magna Sound purchased the IC covers from M/s. Suma Plastics and supplied them to the manufacturer (M/s. JSAPL) it is the latter who has to declare the correct value of the goods at the time of clearance.

Failure on his part cannot be fastened on to the customer unless the record suggests that he has acted in connivance with the manufacturer.

There is no such evidence. We, therefore, uphold the order of the Commissioner setting aside the penalty on M/s. Magna Sound and reject the Revenue's appeal on this aspect.

12. Penalties on the respondents, M/s. JSAPL and its Directors are imposable inasmuch as they have deliberately cleared the goods in contravention of various Central Excise Rules. They were aware as early as in November, 1997 itself that the Department was of the view that the cost of inlay covers has to be added to the assessable value. They neither sought provisional assessment nor did they pay duty under protest on the value arrived at after taking the cost of inlay covers.

This constitutes deliberate contravention of Rules. However, such penalty has to be re-determined after computing the duty evaded as observed by us earlier in this order. Revenue's appeal is thus allowed by way of remand so far as the appeal against setting aside the penalty on M/s. JSAPL and its Director.

(1) Larger period of limitation is not invocable in this case.

However duty can be demanded during the normal period of limitation.

The original authority may determine the duty payable and indicate the same to the respondents. This may be done after hearing M/s.

JSAPL in this regard, if they so desire.

(2) Penalty on M/s. JSAPL and its Directors be determined after computing the duty sought to be evaded during the normal period of limitation.

(3) Revenue's appeals in so far as (1) and (2) above are allowed by way of remand.

(4) Revenue's appeals against the Commissioner's order setting aside the penalties on M/s. Suma Plastics, its partner and against M/s.

Magna Sound are rejected.

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