

**Tables India Ltd. Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Feb-07-2007

**Reported in :** (2007)(117)ECC267

**Judge :** P Chacko, K T P.

**Appellant :** Tables India Ltd.

**Respondent :** Cce

**Judgement :**

1. The appellants were engaged in the manufacture of "P or P medicines". For the period 1992-93 to 1996-97 (upto September 1996), the assessments were kept provisional on account of the fact that the exact quanta of permissible deduction of freight, cash discount etc.

from assessable value were not known at the time of clearance. These deductions could be correctly quantified only at the end of the financial year. Hence the assessee was allowed to pay duty, during the above period, on the basis of provisional assessments in terms of Rule 9B of the Central Excise Rules, 1944. The appellants submitted Chartered Accountant's certificates along with their proposal for finalization of the assessments. From these submissions, it appeared to the department that the abatements claimed were excessive. On the other hand, the assessee was claiming refund of duty on the basis of their Chartered Accountant's certificates. The department, on their own, worked out the amounts of duty paid and duty payable for each financial year and arrived at the differential

amount of duty payable by the assessee for that year. On this basis, the total amount of differential duty payable for the above period worked out to Rs. 13,16,071.25. In a show-cause notice dated 12.9.2000, the jurisdictional Dy.Commissioner proposed to finalize the provisional assessments under Sub-rule (5) of Rule 9B on the above basis and to recover the above amount of duty from the assessee. After considering the submissions of the assessee, the Dy.Commissioner issued order of finalization of provisional assessments for the period of dispute, wherein an amount of duty of Rs. 2,23,924/- was found to have been paid in excess by the assessee but was also held to be not refundable. Against the Dy.Commissioner's order, the department preferred appeal to the Commissioner (Appeals) contending that so much of abatements from assessable value as allowed by the original authority was not admissible to the assessee and that differential duty of Rs. 37,65,075/- was liable to be recovered from them. This contention was accepted by the Commissioner (Appeals) and the case was remanded to the lower authority for reassessment. The present appeal is against this decision of the lower appellate authority.

2. After hearing both sides and considering their submissions, we have to accept the contention of the appellants that the lower appellate authority traveled beyond the scope of the SCN to hold in favour of the Revenue. The SCN had worked out the amounts of differential duty payable by the assessee for each financial year comprised in the period of dispute and had, accordingly, proposed to finalize the assessments and to demand total differential duty of Rs. 13,16,071.25 from the assessee. The assessments were finalized by the Dy.Commissioner who found excess duty payment of only Rs. 2,23,924/- by the assessee. While the assessee accepted this division of the original authority, the Revenue wanted to recover from them an amount of duty much higher than what was demanded in the SCN. This action of the Revenue, not permissible in law, was upheld by the lower appellate authority. If the department had a case that the finalization or provisional assessment required to be made on a basis different from what was proposed in the SCN, they should have issued an appropriate corrigendum to the said notice. It was not open to them to demand as differential duty a higher amount than what was demanded in the SCN, by way of an application under Section 35E(4) of the Central Excise Act against the order passed by the original authority in

adjudication of the dispute arising out of the SCN. Hence the impugned order accepting the department's appeal against the Dy.Commissioner's order cannot be sustained.

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