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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-27-1994

Reported in : (1995)(76)ELT582TriDel

Appellant : Punjstar Standard Electronics

Respondent : Coller. of C.E.

Judgement :

1. M/s. Punjstar Standard Electronics Ltd., Mohali (Shahzada Ajit Singh Nagar), Punjab has filed the above captioned appeals being aggrieved from the Order passed by the Collector of Central Excise (Appeals). Two stay applications have also been filed. Notices were issued for today's hearing. Since the issue involved in both the matters is common and as such both the stay applications are being disposed of by this common order. Shri A.K.S. Bedi, learned Advocate pleaded that the appellant is a manufacturer of television sets and the period in dispute is 24-6-1977 to 12-9-1980. He pleaded that the television sets were assessed under erstwhile Tariff Item 33A(1) and price lists were filed in Part-I and provisional assessments were approved initially. He pleaded that forwarding and packing charges have been included in the assessable value. He pleaded that in the show-cause notices issued by the Assistant Collector there was no mention of the demands and the demands were raised by the Superintendent. He also pleaded that no show-cause notices were issued for raising the demands by the adjudicating authority. He pleaded that when the appellants had gone in appeal, the Collector (Appeals) remanded the matter. Thereafter, a fresh show-cause

notice was issued in the form of a letter which appears on page 57 of the paper book. Learned Advocate pleaded that neither in the original show-cause notice nor in the subsequent letter there was mention of the demand and as such the demands raised are ab initio void and bad in law. He further stated that in the de novo proceedings letter dated 27-1-1984, it was mentioned that in addition to the payment of inclusion of forwarding and handling charges there is also mention of inclusion of "second year after sales service charges" recovered by appellants from the dealers and the amount involved is Rs. 18 lakhs. Shri Bedi pleaded that in the present matter when ex-factory prices were available there is no question of inclusion of any other prices. In support of his arguments he cited a decision of the Supreme Court in the case of Indian Oxygen Ltd. v. Collector of Central Excise reported in 1988 (36) E.L.T. 723. On financial hardship, he pleaded that the appellant's unit is closed since 1982. The total assets at the time of closure of factory were Rs. 12 lakhs out of which Rs. 6 lakhs were for PSIDC and Rs. 6 lakhs were for Blue Star TV Company, Bombay.

Learned Advocate pleaded that in the first matter, the demand is Rs. 1,05,56,040.70 and in the second matter, the demand is Rs. 15,56,645/-, as well as penalty of Rs. 4,00,000/-. He pleaded that in view of the liquidity position of the appellants, they are not in a position to deposit any amount. Shri Bedi, learned Advocate in support of his arguments submitted that no amounts could be recovered without issue of a show-cause notice. He cited the following decisions :- Aluminium Industries Ltd., Kerala v. Collector of Central Excise, CochinCollector of Central Excise, Bhubaneshwar v. Orissa Concrete Products (P) Ltd.Mahindra Engineering & Chemical Products Ltd. v. Collector of Central ExciseUnion of India and Ors. v. Madhumilan Syntex Pvt. Ltd. reported in 1988 (35) E.L.T. 349. Shri Bedi pleaded that there cannot be any demand without a show-cause notice. He pleaded for the grant of stay.

2. Shri A.K. Singhal, learned Junior Departmental Representative who has appeared on behalf of the respondent relies on the Order-in-Original and the Order passed by the Collector (Appeals).

Learned JDR pleaded that for the calculation of demand it is not necessary that all the details should be given in the show-cause notice. In support of his arguments, he cited the following decisions :-Gwalior Rayon Mfg. (Wvg.) Co. v. Union of India and ors.

reported in 1982 (10) E.L.T. 844 (MP);Hindustan Aluminium Corporation Ltd. v. Supdt. of Central Excise reported in 1981 (8) E.L.T. 642;Wadpack Private Ltd. v. Collector of Central Excise reported in 1986 (24) E.L.T. 151.

Shri Singhal further pleaded that the forwarding charges recovered by the appellants from the factory depots pertains to factory price and as such they are includible in the assessable value in terms of Section 4 of the Central Excises and Salt Act, 1944. He, however, pleaded that these assessments are provisional and later on these were finalised and they were in time. He fairly stated that demands pertain to "second year after sale service charges" are partly time barred. Regarding financial hardship, Shri Singhal argued that 50% shares are owned by PSIDC and as such they are reasonably sound enough. He pleaded for the rejection of the stay applications.

3. In reply, Shri Bedi, learned Advocate again reiterated his arguments and pleaded that there has never been a profit and in support of his argument, he referred to the Balance Sheet filed by the appellants.

4. We have heard both the sides and have gone through the facts and circumstances of the case. For the proper appreciation of the legal position, we have perused the show-cause notices. The original show-cause notice dt. 11-5-1981 appears on page No. 24 and second show cause notice also dated 11-5-1981 appears on page Nos. 25, 26 and 27 of the paper book. Original show cause notice pertains to the price lists effective from 27-1-1981 and 6-2-1981 which were assigned serial No.3/81 and 4/81 respectively and the later show cause notice which appears on page 25 of the paper book pertains to price lists effective from 24-6-1977, 10-4-1978, 12-10-1978, 12-10-1978, 21-12-1978, 18-5-1979,6-8-1979,16-11-1979,12-8-1980 and 12-9-1980 which were assigned S.No. 3/77, 3/78, 5/78, 6/78, 7/78, l/Punjstar/79, 2/Punjstar/79, 3/Punjstar/79, 27/80 and 35/80 respectively. In the show-cause notice on page No. 24, there is a mention of

charging of Rs. 265/- per set in respect of the television sets on account of handling and forwarding charges whereas Nos. 25, 26 and 27 the charging amount varies with different television models but the amount has been duly mentioned. Learned Advocate's main plea is that there is no mention of the amount in the show cause notice. In the latter letter which appears on page No. 57 of the paper book dated 27-1-1984, there is reference of the Collector (Appeals)'s Order-in-Appeal No. 366-367/CE/CHG/83, dated 7-12-1983 passed by the Collector (Appeals), New Delhi. The main plea of the appellant is that the amount in the show-cause notice was not mentioned. Both sides had mentioned case law on the subject. For the proper appreciation of the legal position, we would like to observe that the Honourable Bombay High Court in the case of JBA Printing Inks Ltd. v. Union of India and Ors. reported in 1980 (6) E.L.T. 121 (Bom.) had held as under :- "21. To summarise (i) it is not necessary that a show cause notice under Rule 10 must state the rule under which it is issued as long as the requirements of that rule are satisfied; (ii) the notice must require the party to show cause to the proper officer why he should not pay a certain stated amount; (iii) the amount must be stated and manifestly specified in the notice itself; (iv) the party must not be relegated to conjecture, speculation or calculations in order to ascertain the amount in respect of which the show cause notice is issued; (v) the amount determined by the authority as payable shall not exceed the amount specified in the show cause notice; and (vi) such amount which the party is ordered to pay must be stated and manifestly specified in the order without relegating the party to conjecture or calculations for ascertainment of amount ordered to be paid. None of these mandatory requirements of Rule 10 have been complied with in this case. Hence the show cause notice and the impugned orders are liable to be set aside." Honourable Delhi High Court in the case of Hindustan Alum. v. Supdt. of Central Excise reported in 1981 (8) E.L.T. 642 in para 17 had held as under :- Learned Advocate had heavily relied on the Indian Oxygen case reported in 1988 (36) E.L.T. 723 and stated that it is not open to adopt any other prices when there is a price available at factory gate. We had enquired during the course of arguments from the learned Advocate as to whether copies of the price lists have been incorporated in the paper book, to this, he replied that these have not been done. In any case, looking at the price lists is very relevant and the learned Junior

Departmental Representative had argued that forwarding and handling charges are includible in the assessable value even if the sales are from factory to depot and for factory sales. We have duly considered the liquidity position of the applicants. The amount in dispute in the subsequent show cause notice is Rs. 18 lakhs pertains to "second year after sales service charges" and the learned JDR had fairly stated that part of the demand is hit by limitation. West Regional Bench in the case of Rashtriya Chemicals and Fertilisers v. Collector of Central Excise In the matter before us 50% shares are owned by Punjab State Industrial Development Corporation and 50% shares are owned by Blue Star. Keeping in view the totality of the facts and circumstances of the case we are of the view that if the appellants are desired to deposit Rs. 1,05,56,040.70 and Rs. 15,56,645/- as well as penalty of Rs. 4 lakhs, it would amount to undue hardship. We dispense with the pre-deposit of the same on the condition of the applicants depositing Rs. 10 lakhs (Rupees Ten lakhs only) in cash and also furnishing a Bank Guarantee for Rs. 30 lakhs (Rupees Thirty lakhs only) within four months from today. We further order that the applicants shall report compliance of this Order to the registry within five months from today. In case the applicants fail to comply with the terms of this Order, the stay order shall stand automatically vacated. We further direct that during the pendency of the appeal the revenue authorities shall not pursue the recovery proceedings for the balance amount of duty and penalty amounts. While fixing the quantum of the amount to be paid, we have kept in our mind the fact that the factory is closed since long and we have also considered the fact that the factory is running heavy losses.

5. In the result both the stay applications are partly allowed and the matters are listed for mention on 27th May, 1994.

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