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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-06-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Central Excise Appeals No.545 of 2008 & 637 of 2008-SM

Appellant : C.C.E., Chandigarh

Respondent : M/S A.B. Tools Ltd. and Another

Advocate for Pet/Ap. : Shri S. N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue and none for the respondents.

Judgement :

Per M. Veeraiyan:

These two appeals by the Department arise out of a common order in appeal passed by the Commissioner (Appeals) and involved a common issue. Accordingly, the same are disposed of by this common order.

2. Heard the learned SDR. None appears for the respondents in spite of notice.

3. The respondents cleared the goods on payment of duty and subsequently revised prices and collected differential price by issue of supplementary invoices. The original authority demanded interest with reference to the date of clearance of goods under Section 11AB of the Central Excise Act, 1944. The Commissioner

(Appeals) held that the parties were not aware at the time of first clearance of the goods that the value would be enhanced by the purchaser and accordingly, set aside the orders of the original authority.

4. Learned SDR submits that the issue stands decided in favour of the Revenue by the judgment of the Hon’ble Supreme Court in the case of C.C.E., Pune vs. S.K.F. India Ltd. - 2009 (239) ELT 385 (SC).

5. I have carefully gone through the submissions of the learned SDR and perused the records. The issue of liability to interest on price increase effected through supplementary invoices has been settled by the Hon’ble Supreme Court in the case of SKF India Ltd. cited supra. The relevant portion of the judgment is reproduced below:

“14. “We are unable to subscribe to the view taken by the High Court. It is to be noted that: the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty. The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc. The payment of differential duty thus clearly came under sub-section (2B) of Section 11A and attracted levy of interest under Section 11AB of the Act”.

6. In view of the above, the orders of the Commissioner (Appeals) cannot be sustained. Accordingly, the same are set aside and the orders of the original authority demanding interest are restored.

7. The appeals by the Department are allowed.