Customs, Excise and Gold Tribunal - Delhi
R.K. Ispat Udyog And Shri N.N. ... vs Cce on 1 June, 2004
Equivalent citations: 2004 (96) ECC 563
Bench: K Usha, N T C.N.B.
ORDER C.N.B. Nair, Member (T)

1. There is a duty demand of Rs. 1.67 lakh and penalty of Rs. 40,000 against the first appellant who is the manufacturer of the goods in question. The second appellant was an employee of the first appellant.

2. The duty demand has been confirmed by taking resort to the extended period available under proviso to Section 11A to the Central Excise Act, 1944 on the ground that the appellant had collected additional amounts from the buyers; but such realizations were not disclosed to the Central Excise authorities.

3. The appellant is not disputing the fact of collection of additional amount or not disclosing that fact to the Central Excise authorities. In these circumstances, proviso to Section 11A is clearly attracted. The appellants' defence is that extended period was not invocable in the present case, because Central Excise authorities had visited the appellant's factory in October 1996 (the duty demand is for the period 1995-96) and they had become aware of the short levy and they could have issued duty demand within the normal period from October 1996. It is also pointed out that with regard to part of the demand relating to seized goods, another show cause notice had been issued within the normal period and proceedings concluded. The learned Consultant appearing for the appellant emphasized that in these facts, where revenue authorities became aware of short levy in 1996 itself, they were not justified in issuing a show cause notice on 25.1.2000 by taking resort to the extended period. He also emphasized that in the first show cause notice relating to seized goods, no suppression of facts was alleged or proviso to Section 11A invoked. The learned Counsel has relied on the following decisions of this Tribunal in his support:

(i) Jalla Industries v. CCE, Mumbai-I 2000 (117) ELT 429.

(ii) CCE, Chandigarh v. Raja Ram Corn Products, 2004 (167) ELT 410.

(iii) Parke Davis (I) Ltd. v. CCE, Mumbai-II, 2003 (158) EET 183.

(iv) ICI (India) Ltd. v. CCE, Mumbai-III, 2003 (256) ELT 362.

(v) Srinisan Cables (P) Ltd. v. CCE, Hyderabad, 2000 (126) ELT 1057.

4. The learned JDR has submitted that in the facts of the case there is no dispute that suppression of fact was involved. According to him, to such a case extended period of five years applies from the "relevant date". He also pointed out that, when Central Excise authorities became aware of the short levy or non-levy is altogether irrelevant in the scheme of Section 11A of the Act, inasmuch as the section contemplates show cause notice within a period of six months or five years from the

"relevant date" and no mention whatsoever is made about the time when Central Excise authorities became aware of the evasion of duty. Learned SDR also pointed out that the legal position has to be construed in this manner only, since considerable time may be required to investigate cases involving evasion of duty by resort to fraud, collusion, suppression of facts etc. He also pointed out that this legal position remains settled by the decision of the Larger Bench of this Tribunal in the case of Nizam Sugar Factory v. Collector of Central Excise, Hyderabad, 1999 (114) ELT 429.

5. We have perused the records and considered the submissions made by both sides. We are not able to agree with the appellant on the issue of time limit. The learned DR is right in his contention that time limit, whether normal period or extended period under Section 11A, is to be counted only with reference to "relevant date" and not with regard to any other date. Section 11A specifically states so. Relevant date is a statutorily defined date. Therefore, there is no justification to take into account any other date, like the date on which Central Excise authorities became aware of the evasion of duty. This position remains settled by the decision of the Larger Bench of this Tribunal in the case of Nizam Sugar Factory (supra). That a show cause notice had been issued earlier with regard to seized goods is also of no relevance to the dispute. In these circumstances, the appeal of the first appellant assessee fails and is rejected.

6. We, however, find that there is no justification for imposing a penalty on the second appellant Shri N.N. Swamy, Manager. He is only an officer of the company and it has been his contention from the beginning that he was not responsible for the evasion of duty. Therefore, his appeal is allowed and penalty imposed on his is set aside.