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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/251 /2005 - EX[DB]   Date **02/05/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

SHREE SECO PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.373/ 2011 EX[DB]** dated 20-4-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
SHREE SECO PVT. LTD.
DURGAPURA, JAIPUR

2. Adv. / Consult SH. M.GARG, ADV., L/D RESPONDENT

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications, Customs. Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House.1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

ASSISTANT REGISTRAR
(EXCISE APPEAL BRANCH)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:20.4.2011

Central Excise Appeal No.251 of 2005

Arising out of the order in appeal No.343 (MPM)CE/JPR-I/2004 dated 11.10.2004 passed by the Commissioner (Appeals I), Jaipur.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

C.C.E., Jaipur I .. Appellant

Vs.

M/s Shree Seco Pvt. Ltd. .. Respondents

Appearance:

Shri I. Baig, Authorised Departmental Representative (DR) for the Revenue
Shri M. Garg, Advocate for the respondents.

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh KUMAR, Technical Member

FINAL Oral Order No. 373/2011-EX

Per Shri Justice R.M.S. Khandeparkar :

Heard the DR for the appellant and the Advocate for the respondents. This appeal arises from the order dated 11.10.2004 passed by the Commissioner (Appeals), Jaipur. By the impugned order, the Commissioner (Appeals) allowed the appeal filed by the respondent and set aside the order passed by the adjudicating authority. The Assistant Commissioner, Jaipur by his order dated 6.7.2004 had confirmed the demand of duty to the tune of Rs.1,10,554/- along with interest and equal amount of penalty against the respondents. The Commissioner (Appeals) set aside the said order on the ground that the Department invoked the period of limitation without disclosing in the show cause notice, the ground on which the extended period of limitation was invoked.

2. Upon hearing the DR for the appellant and the Advocate for the respondents and taking into account the rival contentions, the only issue which arises in the matter is whether the Commissioner (Appeals) was justified in setting aside the order passed by the adjudicating authority on the ground that the show cause notice lacked information regarding the ground for invoking extended period of limitation.

3. The entire discussion on the issue of non-disclosure of the ground for invoking extended period of limitation in the show cause notice is comprised under para 5 and 6 of the impugned order and the same held as under:-

> ***" I have carefully gone through the case records and submission made by the appellant in appeal memorandum as well as during the course of personal hearing. I , without going into the merits of the appeal, find that show cause notice No.V(73)15/Off/238/2001/5037 dated 27.11.2001 was issued to the appellant on the same issue and on the same grounds for the normal period 03/2000 to 02/2001 whereas in instant appeal show cause notice No.V(73)15/off/98/2002/1743 dated 23.4.2003 was issued for earlier period i.e 1998-99 to 1999-2000 (upto 2/2000) invoking extended period without mentioning any reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of or any of the provisions of the Act. Now it is well settled that once facts came into the knowledge of Department and show cause notice was issued, then subsequent show cause notice invoking extended period cannot be issued. I further find the case of M/s Neyveli Lighting Corp. Ltd. Vs. C.C.E.- 1992 (58) ELT 76 is squarely applicable in the instant case. Wherein it was held that 'Demand-Limitation –Extended period of limitation not applicable when demand for subsequent period raised under normal limitation and demand for earlier period raised subsequently – suppression of facts by appellants alleged by department –Demand in respect of a subsequent period when raised by department parallel proceedings could have been initiated for a previous period also – Extended period for limitation not invokable – Demand hit by limitation – Section 11A of Central Excise and Salt Act, 1944' and in case of Collado Beverages Ltd. and others vs. C.C.E, New Delhi reported in 2004 (60) RLT 647 (CEGAT-Del), the CEGAT held***

that 'Limitation –Demand – Section 11A of CEA, 1944 – extended time limit not invokable as Deptt. was aware of the fact of the second appellant being the holding company of the first appellant who was making major portion of sales to the second appellant –appeals allowed'. This was also affirmed by the Hon' ble Supreme Court reported in 2004 (60) RLT F 5 (Part-6).

In view of above discussion and respectfully following the ratio of Hon'ble Tribunal's judgment (supra), I hold that the show cause notice was issued after one year from the relevant period of demand therefore, it is by time limitation under Section 11A of Central Excise Act, 1944, thus, the impugned order is not maintainable in law, therefore, I set aside the same and allow the appeal".

4. Perusal of the show cause notice however, clearly discloses the relevant averment for extended period of limitation. The same reads as under:

> ***" And whereas, filing of 'Price Declaration' and 'Marketing pattern' were required under Rule 173C of erstwhile Central Excise Rules, 1944. But they did not file the required Price Declaration and Marketing pattern with intention to evade central excise duty and suppressed the facts. It resulted in short payment of central excise duty to the tune of Rs.1,10,554/- during the year 1998-1999 and 1999-2000 (upto 2/2000). The duty short paid is recoverable from the assessee under proviso to Section 11A(1) of Central Excise Act, 1944".***

5. Perusal of the show cause notice clearly stated that in terms of the Rules in force, the assessee was required to make certain declaration and disclose certain facts. However, the same were suppressed with the intention to evade payment of duty. Apparently, therefore, the extended period of limitation was sought to be invoked on the ground that there was suppression of facts with intention to evade duty. Commissioner (Appeals) does not appear to have taken note of this important aspect while deciding the appeal and merely on the basis of M/s Neyveli Lighting Corp. Ltd. Vs. C.C.E.- 1992 (58) ELT 76, Collado Beverages Ltd. and others vs. C.C.E, New Delhi reported in 2004 (60) RLT 647 (CEGAT-Del) and the decision of the Hon'ble Supreme Court reported in 2004 (60) RLT F -5, the appeal was allowed by referring to the arguments which were sought to be advanced on behalf of the respondents. It was necessary for the Commissioner (Appeals) to ascertain whether the arguments ~~are~~ were born out from the records or not. No such exercise was done by the Commissioner (Appeals) and in most casual manner by referring to the arguments on behalf of the assessee and the reported

decisions and totally ignoring the fact that the show cause notice in fact discloses the ground on which extended period was sought to be invoked, allowed the appeal and set aside the order passed by the adjudicating authority.

6. Plain reading of the show cause notice in the matter in hand would justify that the impugned order is not sustainable and is liable to the set aside and the matter remanded to the Commissioner (Appeals) to decide the same on merits.

7. The decision in the matter of Commissioner of C.Ex., Delhi IV vs. Escorts Limited (TED) reported in 2009 (235) ELT 55 (P & H) was to the effect that the mere failure to declare does not amount to wilful mis-declaration or wilful suppression. There must be some positive act on the part of the party to say that there was wilful mis-declaration or wilful suppression in that regard. All the facts are required to be considered by the adjudicating authority. Undoubtedly, the assessee can very well place before the concerned authority that there was no mis-declaration or wilful suppression in the matter and the Department can also counter the same. All these aspect can be looked into in the course of hearing in the proceedings and they may not form part of the show cause notice itself. In the case in hand, the appeal was allowed by the Commissioner (Appeals) has merely recorded that show cause notice did not disclose the ground for invoking extended period of limitation. As the finding is contrary to the contents of the show cause notice issued to the respondents, the same is not sustainable.

8. Accordingly, the appeal is allowed. The impugned order is set aside and the Commissioner (Appeals) is directed to decide the appeal on merits as expeditiously as possible.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/