

Commr. of Cus. and C. Ex. Vs. R.K. Machine Tools Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-1998

Reported in : (1998)(103)ELT689TriDel

Appellant : Commr. of Cus. and C. Ex.

Respondent : R.K. Machine Tools Pvt. Ltd.

Judgement :

1. This is an appeal from the Revenue against the Commissioner (Appeals) allowing refund of countervailing duty on melting scrap imported by the respondents herein and used captively in the manufacture of iron and steel products.
2. The original authority did not allow the refund on the ground of unjust enrichment of the respondents inasmuch as it has been held by that authority that the duty paid on the melting scrap has been passed on to the buyer of the iron and steel products manufactured out of that melting scrap.
3. The lower appellate authority in giving benefit of refund of countervailing duty to the importers/respondents has relied on Bombay High Courts' judgment in the case of Wyeth Laboratories v. Union of India -1992 (57) E.L.T. 68 (Bom.) and Kusum Engg. Works v. Union of India - 1993 (63) E.L.T. 21 (Bom.).
4. The learned JDR, Shri A.M. Tilak for the Revenue submits that a recent judgment of Division Bench of Madras High Court in the case of CC v. Indo Swiss

Synthetic General Manufacturing Co. Ltd. reported in 1996 (13) RLT 379 (Mad.) is in Revenue's favour wherein it has been held that duty of Central Excise paid on input which goes directly to the manufacture of another product becomes a part of the cost of manufacture of the new item or items. In that case, it was RF solution going into manufacture of dipped solution and dipped fabrics. It is, therefore, held by the Division Bench of Madras High Court that such duty of Central Excise is thus passed on indirectly to the customers and the buyers by sale of finished product. The Madras High Court did not feel it appropriate to share the opinion expressed by Bombay High Court in the case of Solar Pesticides Pvt. Ltd. followed subsequently in Wyeth Laboratories and Kusum Engg. Works mentioned supra and relied upon by the lower appellate authority.

5. The learned JDR further draws attention to the Bench to the effect that this issue is already pending before the Supreme Court and their decision is awaited. At this stage the learned Advocate, Shri K.K.Anand points out that the matter involving this issue have come at the Board of the Apex Court but the matters are getting adjourned.

Therefore, he submits that no hearing has taken place so far on the issue and hence there is no immediate expectations of the pronouncement of Apex Court on this issue.

6. Opposing the contentions the learned Advocate, Shri K.K. Anand relies on, apart from two judgments already mentioned in the Commissioner (Appeals) orders :- 7. It is stated across the Bar by both the sides that no judgment of Delhi High Court on this issue has been delivered to the best of their knowledge.

7.1. He also states that Revenue's SLP against Bombay High Court judgment in the case of International Conveyors v. Union of India following Solar Pesticides supra has been dismissed by the Apex Court as reported in 1996 (88) E.L.T. A165. The learned Advocate, therefore, submits that the judgment of the Bombay High Court in Solar Pesticides has found favour with the Apex Court.

8. I have carefully considered the pleas advanced from both the sides.

I observe that the weight of the authoritative opinion on this issue is more in favour of the assesseees rather than of the Revenue. There are judgments of two High Courts namely Bombay and Calcutta as regards the single judgment of Madras High Court in favour of the Revenue. Apart from the foregoing authoritative opinion of the view that Section 28D, on its plain reading, favours the assesseees. For the sake of convenience that Section is reproduced below :- "28D. Presumption that incidence of duty has been passed on to the buyer. - Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods." 9. It is clear from the aforesaid provisions that presumption that incidence of duty is passed on to the buyer is only when "such goods" are sold to another person i.e. to the buyer. The question is what is the meaning of "such goods"? The expression "such goods" will obviously derive the meaning from earlier reference to the goods in the said provisions. That earlier reference is in the earlier part of Section 28D which says that every person who has paid the duty on any goods under this Act. In other words, the goods on which duty has been paid have to be sold "as such" to another person i.e. to a buyer before raising a presumption that the duty has been passed on to the buyer. If the goods "as such" which have borne the duty under the Act are not sold but have been used in manufacture of other goods then the provisions of Section 28D clearly will not be available for raising the presumption.

10. In view of the foregoing discussion, I dismiss the appeal of the Revenue.

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