

Commissioner of Central Excise, Vs. Kothari Products

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-22-2002

Reported in : (2002)LC560Tri(Delhi)

Judge : S T G.R., P Bajaj

Appellant : Commissioner of Central Excise,

Respondent : Kothari Products

Judgement :

1. Revenue has filed this appeal assailing the order of the learned Commissioner (Appeals). Learned Commissioner (Appeals) had held, "6(d) In terms of the judgment of the Hon'ble Supreme Court and subsequent judgments of the Hon'ble Tribunal, the refund claim is just and lawful.

Therefore, the refund claim has been wrongly rejected on the ground that the burden thereof was passed on to the customer. In view of this order-in-original is set aside and refund of Rs. 19,88,887/- is allowed." 2. The facts of the case in brief are that the respondents herein are engaged in the manufacture of Pan Masala. The respondents herein filed a refund claim of Rs. 19,88,887/- on the ground that turnover tax in the State of Tamil Nadu was of the order of 2.5% whose turnover exceeded Rs. 10 lacs but did not exceed one hundred crores; that the deduction on account of turnover tax was not made from sale price and excise duty at a rate of 40% was paid; with the abolition of turnover tax and change in the rate of sales tax revised price list for stock transfer was filed; that turnover tax of 2.5% was to

be additionally paid to the State Government without collecting from the customers; that the turnover tax from 17-7-1996 to 4-12-1996 was worked out to Rs. 70,85,606/- which has been paid to the State Government; that turnover tax is an admissible deduction and was being claimed prior to 17-6-1996; that the excise duty was thus payable after deduction of turnover tax; that excise duty amounting to Rs. 19,88,887/- has thus been paid in excess. A show cause notice was issued to the respondents herein asking them to explain as to why their refund claim should not be rejected. In reply to the show cause notice respondents herein submitted that it is well settled principles of Section 4 that all the taxes actually paid are in-built in the sale price and these are deductible for arriving at assessable value. It was contended that excise duty of Rs. 70,85,606/- which represented turnover tax paid was borne by the respondents herein and was refundable to them. The Assistant Commissioner rejected the refund claim. The appellant filed an appeal before the Commissioner (Appeals) who held as indicated above.

3. Arguing the case for Revenue Shri Mewa Singh, learned SDR submits that turnover tax amount was not included in the assessable value at the time of removal of the goods from the factory on which duty had been paid. Therefore, the question of deduction thereof did not arise; that the learned Commissioner (Appeals) did not appear to have examined this aspect; that the observation of the learned Commissioner (Appeals) is that turnover tax has not been collected from the customer since it was not known at the time of removal and could not have been charged, which is incorrect. Learned DR submits that in addition to the provisions of Section 12A and Section 12B of the Central Excise Act, 1944 which did not appear to have been satisfied in this case and on which no discussion has been made in the impugned order and the contention of the respondents herein that the price of the goods charged by them and also recovered from the customers remained the same as they charged prior to 17-7-1996. Therefore, the total amount recovered by the respondents herein from the customers included excise duty leviable on the turnover tax. Learned DR, therefore, prayed that the appeal filed by the Revenue may be allowed.

4. Shri A.R. Madhav Rao, learned Advocate appearing for the respondents herein submits that there are a number of judgments of this Tribunal holding that taxes which are permissible to be deducted under Section 4 from the assessable value, cannot be disallowed even if they are paid periodically. In support of this contention he cited and relied upon the decision of the Apex Court in the case of Bombay Tyre International 1984 (17) E.L.T. 329.

5. Learned Counsel submitted that in the case of Cadbury India Ltd. v.C.C.E. reported in 1993 (63) E.L.T. 163, this Tribunal held that turnover tax if paid in accordance with relevant statute is deductible from assessable value even if paid periodically to concerned taxing authorities. Learned Counsel also submitted that this Tribunal in the case of Peico Electronics & Electricals Ltd. v. C.C.E. reported in 1994 (71) E.L.T. 1053 observed that taxes like additional sales tax., turnover tax, surcharge on sales tax and octroi payable by assessee whether at the time of sale or at a future date and whether recoverable from customers or not deductible for arriving at assessable value under Section 4(4) of the Central Excises and Salt Act, 1944. Learned Counsel submitted that similar view was held by the Tribunal in the case of Nestle (India) Ltd. v. C.C.E. - 2000 (117) E.L.T. 376, in the case of C.C.E. v. Kothari Products (P) Ltd. - 2001 (127) E.L.T. 378 and in the case of Sujata Textile Mills v. C.C.E.6. Learned Counsel submits that turnover tax was neither known nor charged on the bills was borne by the respondents which is evident also from the fact that turnover tax was demanded and was deposited by them by Demand Draft subsequently. Learned Counsel also submitted that it is an admitted position in the instant case that turnover tax was retrospectively levied and paid by the respondents herein and therefore, the question of passing on the burden of turnover tax to the buyer did not arise. The learned Counsel, therefore, prayed that impugned order may be upheld and the appeal filed by the Revenue may be rejected.

7. We have considered on the submissions made by both the sides. We note that two issues arise for determination. The first issue is whether turnover tax was deductible from the assessable value. We have perused the case law cited above by the respondents herein. We note that turnover tax is deductible from the assessable value.

8. We now come to second issue. The second issue is whether the burden of turnover tax was borne by the assessee. In this case admitted position is that turnover tax was collected subsequently that is subsequent to the date of clearance of the goods and thus the question of passing on the burden to the customers did not arise.

9. In view of the above we do not find any reason to interfere with the impugned order. The impugned order is therefore, upheld and the appeal is rejected.

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