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Kothari Pouches Limited Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-03-2003

Reported in : (2003)(159)ELT927TriDel

Judge : S Kang, a T V.K.

Appellant : Kothari Pouches Limited

Respondent : C.C.E.

Judgement :

2. The appellants filed this appeal against the adjudication order passed by the Commissioner of Central Excise. The learned Commissioner of Central Excise confirmed the demand on the ground that the appellants paid additional duty at the rate of 10% instead of 18% during the period in question..

3. The contention of the appellant is that as pre budget for the year 2001-2002, the rate of duty of Pan Masala containing Tobacco were Basic Excise duty at the rate of 16%, additional Excise duty at the rate of 18%, Special Excise duty at the rate of 16% and National Calamity Contingent Duty (NCCD) at the rate of 10%. The total of these duties comes to 60%. The contention of the appellant is that while clearing the Pan Masala containing Tobacco they by mistake paid additional excise duty at the rate of 10% instead of 18% and on the other hand, paid NCCD at the rate of 18% instead of 10%. The contention of the appellant is that in all they paid 60% duty and if the differential duty in respect of additional excise duty is demanded, in such a case, they are entitled for refund of NCCD which was paid in

excess. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of Collector of Central Excise, Hyderabad v. Divya Enterprise Ltd., reported in 2003 (153) E.LT.497(S.C) where Hon'ble Supreme Court allowed such adjustment.

4. The contention of the Revenue is that the applicants had paid less additional excise duty. Therfore, they are liable to pay differential duty.

5. We find that there is no dispute on the fact that appellants had paid 60% duty. They had paid 8% less as additional excise duty, whereas they had paid 8% more NCCD. We find that the Hon'ble Supreme Court in the case of Divya Enterprise Ltd.(Supra) where the assessee paid duty on exempted product and had not paid duty on fabric used in the manufacture of the exempted product, held that the duty is to be paid on fabrics and directed the Revenue to give adjustment of duty paid on exempted final product. The Hon'ble Supreme Court further held that, if, on calculation of duty it is found that higher amount has been paid, then the assessee is entitled for refund and if, it was found that some duty has still to be paid, then the assessee shall pay the duty. In the present case the appellants paid 8% less on additional excise duty and paid 8% more NCCD. Therfore, in view of the above decision of the Hon'ble Supreme Court, if the adjutment of 8% is given then there will be no deficiency in the payment of additional excise duty. Hence, the impugned order is set aside and the appeal is allowed.

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