Mithusha Vessels and Engineers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-14-2003

Reported in : (2003)(160)ELT1152Tri(Mum.)bai

Judge : J Balasundaram, S T C.

Appellant : Mithusha Vessels and Engineers

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants herein are inter alia engaged in the manufacture of "trailers and semi-trailers not mechanically propelled and parts thereof", namely, tanker trailer, whether or not fitted with pumps.

They had filed a classification list effective from 01/04/1992 classifying the above product under CETA sub-heading 8716.00. On being informed that the goods attracted duty under CETA sub-heading 8704.00 as LPG tanks they started clearing the product under the above mentioned chapter discharging duty liability @ 15% ad valorem. Claim for refund for Rs. 1,22,625/-being the duty paid in excess of clearances between 20/10/1993 to 09/01/1994 was filed; which claim was proposed to be rejected by issue of show cause notice dated 14/08/1995, on the ground that duty was correctly paid under CETA sub-heading 8704.00. Notice was adjudicated by the Assistant Commissioner rejecting the claim; the lower appellate authority upheld the Assistant Commissioner's order holding as under: "8. ....I find no evidence on record which categorically supports any claim by the appellants that the subject classification list filed under ch. sub-heading 8704.00 has been filed after registering a protest against the classification. There is also no evidence to suggest that while working out the cum-duty price charged from their buyers for the subject goods they have considered the lower percentage of duty payable under C.S.H No. 8716.00 of the schedule. Whereas the relevant gate pass reveal payment of duty at the high rate under Ch. sub-heading 8704.00 and not at any lower rate of duty.

"9. Therefore, in the absence of evidence establishing the claim of the appellants have collected lower amount of duty from the buyers for the goods, from the amount reflected in the gate pass, there is no reason not to accept the findings in the impugned order that the duties have been collected at the higher rate from the buyers.

Accordingly, irrespective whether in the determination of the Tribunal classifying the subject goods under Chapter heading 8716.00 of the schedule, the appellants are not eligible for refund under the amended Section 11B of the Act. Any amount if paid in excess and collected from the buyers, from the duty chargeable under law is required to be transferred to Consumer Welfare Fund created under this Act, and not refundable to the appellants. Appeal for refund is accordingly rejected as untenable under the law." 2. We have heard both sides. We find that the appellants are correct in contending that the doctrine of unjust enrichment applied against them in the impugned order was never an issue at any prior stage of the proceedings. They were not put to notice that this bar was going to be held against them and they were not called upon to produce any evidence to establish that they had not passed on the duty burden to their customers. In view of the above and also noting that appellants have stated that the correct classification of the product in dispute has been settled in their favour by a Tribunal's order No 375/96/WZB/ dated 28/01/1997 and also noting their submission that duty was paid under protest, was set aside the impugned order and remand the case to the jurisdictional Assistant Commissioner / Deputy Commissioner, for denovo adjudication in accordance with law after extending a reasonable opportunity to the appellants to produce evidence regarding not passing on of the duty burden to their customers. It is open to the appellants to raise all pleas including the plea that the classification of the product has been held to be under CETA sub-heading 8716.00 as claimed by them. In the result the appeal is allowed by remand.