Sriyansh Knitters Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-05-2003

Reported in : (2004)(91)ECC122

Judge : P Bajaj, M T K.D.

Appellant : Sriyansh Knitters

Respondent : Cc

Judgement :

1. This appeal has been directed by the appellants against the impugned Order-in-Appeal vide which the Commissioner (Appeals) has affirmed the Order-in-Original of the Deputy Commissioner who after sanctioning the refund claim of the appellants, directed that the same be deposited in the Consumer Welfare Fund.

2. None has come present on behalf of the appellants in spite of service of notice on them for today's hearing. No request for adjournment has been also received from the appellants. Therefore, we proceed to decide the appeal after hearing the learned SDR.3. We have perused the record. The perusal of the impugned order under appeal shows that the appellants had failed to prove that the incidence of duty was not passed on to the consumer. The appellants, no doubt imported the raw material, for captive consumption but still they were required to prove that incidence of duty had not been passed on by them to the consumer in view of the Apex Court judgment rendered in the case of Solar Pesticides, 2000 (68) ECC 25 (SC): 2000 (116) EM'401 (SC).

Therefore, the burden to prove the non-passing of the incidence of duty by them to the consumer was on the appellants and they have failed to discharge the same satisfactorily. The entries in the balance sheet had been, in our view, rightly not accepted and relied upon as a substantial piece of evidence for want of corroboration from any other source. Those entries were not even found authenticated by the authorities below. The affidavit of an advocate regarding those entries could not be attached legally any credence for having no personal knowledge about the correctness of the entries recorded in the books of accounts of the appellants. He could neither be turned as an author nor a witness of the entries made by the appellants in their records. The appellants have also failed to produce any evidence to show the basis on which the entries were made in their record.

4. The plea of the appellants that the doctrine of unjust enrichment was not applicable to their case had been, in our view, rightly rejected by the authorities below in view of the ratio of the law laid down by the Apex Court in the case of Mafatlal Industries v. Union of India, 2002 (83) ECC 85 (SC) : 1997 (89) ELT 247 (SC), wherein it has been observed that this doctrine would apply even to the pending cases.

Therefore, we do not find any illegality in the impugned order of the Commissioner (Appeals) and the same is upheld.