

Subros Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-19-2003

Reported in : (2004)(92)ECC367

Judge : N T C.N.B., P Chacko

Appellant : Subros Ltd.

Respondent : C.C.E.

Judgement :

1. Grievance raised in these three appeals of M/s Subros Limited is the denial of refund claims made by them in respect of supply of motor vehicle parts to Maruti Udyog Ltd. 2. Lower authorities rejected the claim partly on the basis of time-bar and partly is on the ground of unjust enrichment. It is not in dispute that part of the refund claim fell outside the normal period stipulated in Section 11B of the Central Excise Act, 1944. However, the Appellants have contended that supplies were against on long terms contract with Maruti Udyog Ltd. and since those contracts contained provision for price revision/the assessable value and duty paid should be treated as provisional we are unable to find merit in this submission. It is well settled that the normal time-limit for refund would apply to all cases unless they fall under the exception of original payment of duty being on provisional assessment. This position applies equally to supplies made against contracts having provision for price revision [(A.Infrastructure Ltd v. CCE, Jaipur, 2000 (67) ECC 613 (T) : 2000 (117) ELT 583 (T)]. In view of this legal position, the lower authorities were right in determining that part of the refund claims were beyond time-limit.

3. On the second issue of unjust enrichment, it is submitted by the learned Counsel that since prices are subject to variation, invariably, price and duty are adjusted between parties and therefore, the question of unjust enrichment cannot arise. He has, in support of, this relied on a letter dated 12.12.98 of Maruti Udyog Ltd. which contains the following statement: "In case the price is amended retrospectively, the difference amount is adjusted with the vendor. On the event of an increase, the difference amount is paid to the vendor, and if there is a reduction in the price, the difference amount is recovered from the vendor alongwith the excise applicable on it." 4. While the above may be the general practice between the parties, refund claims of specific amounts cannot be settled on the basis of above statement of the buyer. It is the requirement that the particular amount claimed as refund should not have been passed on to the buyer.

The learned Counsel for the appellant has submitted that the factual position in respect of the amounts in question shall be presented before the lower authorities for verification. In view of this, we are of the opinion that eligibility of the refund claims within normal period of time -- limit, is required to be reconsidered by the lower authorities based on evidence to be produced by the appellant on the question of passing on of duty amount. In order to facilitate the same, we remand the appeals to original authority for a fresh decision. The appellant shall produce evidence in question before the original authority within six weeks of the receipt of the copy of this order.

Thereupon the original authority shall consider their claims afresh and pass orders within a period of six weeks from the production of the evidence. The appeals are disposed of in the above terms.

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