Commissioner of Central Excise Vs. N.G. Thakkar and Sons

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-09-2004

Reported in : (2004)(166)ELT115Tri(Mum.)bai

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : N.G. Thakkar and Sons

Judgement :

1. Respondents are manufacturers of 'Asafoetida' and were paying duty under protest and were issuing the Central Excise Invoice as per the law i.e. showing the duty element separately. However, the commercial invoice issued did not show the duty element separately. The CCE (Appeals) after recording a finding to the effect - "..... The appellants had started paying the duty effective from 25.03.199. Prior to the said dated when they started paying duty in their composite sale price was Rs. 90/- per kg. Similarly they have also contended that with effect from 1.3.2000 the rate of C. Excise duty on their products had gone up from 8% to 16%, however, even after the amount of the duty paid by them had doubled, their composite sale price had remained the same. They have submitted that their composite sale price prior to 1.3.2000 and after 1.3.2000 had remained @ Rs. l30/- per kg. With effect from 4.5.2000 the appellant's goods were granted exemption from whole of the duty and the appellants ceased to pay the duty. However, even when they ceased to pay the duty, i.e. when the rate of duty was ML, their composite sale price had remained the same i.e. when the rate of duty was NIL, their composite sale price

had remained the same i. e.

@ Rs. 130/-per kg. They have submitted that during the intervening period there was increase in the sale price of the goods on account of increase in the cost of raw materials, in support of which they have produced a Chartered Accountant's certificate. This is evidence enough that the incidence of the duty paid under protest was borne by them and was not passed on to their customers." and thereafter relying upon the catena of decision beginning with Metro Tyres Ltd. {1995 (80) ELT 410} which was upheld by S.C. concluded that the incidence of duty was not passed on the CA certificate was relied which confirmed that the amounts on account of duty were debited to the Profit & Loss Accounts and that the respondents would go in loss. The fact that "EXCISE DUTY NOT COLLECTED FROM CUSTOMERS" was prominently stamped on Excise Invoices and relying upon the case of Infar (India) Ltd. {2002 (52) RLT 303 CEGAT} holding that when the invoice issued by the assessee indicates that duty is not included in the sale price then such endorsements successfully rebut the statutory principle of duty incidence having been passed on to the customers. The refund was allowed.

a)Increase in price was not due to Raw Material cost increase and was much more than incidence of duty.

b) The CA certificate does not bring out the correct picture since the amounts shown are under the Head 'Deposits & Investments' and would have no bearing on Profit and Loss.

c) From Ledger Accounts it can be seen that total amounts as per invoices have been recovered therefore the endorsement on excise invoice is not the correct picture.

d) Rely upon para 91 of Mafatlal Industries case {1997 (89) ELT247SC}.

a) The paragraph relied upon from the case of Mafatlal Industries {1997 (89) ELT 247 SC} on a perusal reveals that there is no conflict with the propositions in paragraph. When the CCE (Appeals) on facts, established that on exemption of the product from duty, the price remained the same at Rs. 130/- per kg and it is on record that increase in prices are not equivalent to the increase in duty.

This factual finding is not challenged. The reliance on the Tribunal decision in the case of Infar (India) Ltd. {2002 (52) RLT 303} by the CCE (Appeals) cannot be faulted. Nothing has been placed before us to show that the appellants profit would not result in loss, if the refund is not granted. The very fact that the excise duty discharge under protest has been shown in the Balance Sheet under the head 'Deposits and Investments' cannot lead to a conclusion that return of this 'deposit' would be 'unjust enrichment'. It would be justified 'Profit' as per the accounts.

b) There is nothing in the grounds taken by Revenue to upset the CCE (Appeals) order when it is found that Metro Tyre case {1995 (80) ELT 410} has been upheld by the Supreme Court and followed by other decision. Following the same, therefore it has to be held that there is material on record to hold that cum duty price refunds if not given would cause a loss or/and injury to the respondents. The orders of the CCE (Appeals) therefore are to be upheld and Revenue's appeal is dismissed.