A.K. Spintex Vs. Cce

A.K. Spintex Vs. Cce

SooperKanoon Citation : sooperkanoon.com/33822

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-16-2004

Reported in : (2004)(178)ELT386TriDel

Judge : S Kang, a T V.K.

Appellant : A.K. Spintex

Respondent : Cce

Judgement :

2. Revenue filed this appeal against the Order-in-Appeal wherein the Commissioner (Appeals) held that principle of unjust enrichment is not applicable in respect of the refund claim of the respondents.

3. The brief facts of the case are that the appellants are engaged in the processing of M.M. Fabric with the aid of hot air stenter. The annual capacity of production of hot air stenter was determined by the Commissioner of Central Excise under the Compounded Levy Scheme. The respondents filed a declaration for determination of their annual capacity of their stenter without including the length of galleries.

The annual capacity Excise taking into consideration the length of galleries. The respondents paid differential duty under protest and challenged the order passed by the Commissioner of Central Excise fixing capacity of the stenter including length of galleries. The Tribunal set aside the order and held that the annual capacity of the stenter is to be fixed without considering the length of galleries.

4. In pursuance to the order passed in their favour, the respondents filled a refund claim in respect of the duty paid under protest. The Adjudicating Authority allowed the refund but directed the amount to be deposited in the Consumer Welfare Fund on the ground that the respondents have not produced the proof that the burden of duty has been borne by them. On appeal filed by the respondents, the Commissioner (appeals) set aside the Adjudication order and allowed the refund.

5. The contention of the Revenue is that every refund is subject to provisions of unjust enrichment in view of the decision of the Supreme Court in the case of Mafatlal Industries Limited Vs. Union of India, reported in 1997 (89) ELT-247.

6. The contention of the respondents is that the differential duty was deposited on re-determination of annual capacity of of the stenter by the Commissioner of Central Excise and duty was paid under protest and was not return from this customer and relied upon the decision of the Supreme court in the case of Sinkhai synthetics & Chemicals Pvt. Ltd. Vs. CCE, Aurangabad, reported in 2002 (143) ELT-17.

7. We find that in this appeal the only issue is whether principle of unjust enrichment is applicable to the facts of the case. Admittedly, the duty was paid in pursuance to re-determining of the annual capacity of the stenter and there is no evidence on record that this duty paid by the respondents was ever recovered by them from their customers. As the differential duty was paid by the respondents on redetermination of the capacity of the stenter and the same was not recovered from their customers, in these circumstances, we find no infirmity in the impugned order. The appeal is dismissed.