Commissioner of Central Excise Vs. Ellora Services

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-12-2004

Reported in : (2004)(173)ELT447Tri(Mum.)bai

Judge : M T K.D.

Appellant : Commissioner of Central Excise

Respondent : Ellora Services

Judgement :

1. This is Revenue appeal against the order passed by the Commissioner (Appeals). The issue relates to applicability of clause of unjust enrichment.

3. The appellants undertake manufacturing of certain goods on behalf of their principal manufacturer M/s. Adishakti International Pvt. Ltd. It is admitted position that the appellants were entitled to refund claim of Rs. 4,21,036/-. The Deputy Commissioner concerned, though sanctioned the amount, he did not pay the same to the appellants, but transferred the same to Consumer Welfare Fund under the provisions of Section 11B(2) of the Central Excise Act, 1944 (Act). The appellant's contention to the effect that, they have not passed on the incidence of duty to the customer was not accepted. It had come on record that the appellants has passed on the incidence of higher duty to their customer viz M/s Adishakti. Hence the claimed amount was credited to the fund in terms of provisions contained in Clause (d) of Section 11B (2) of the Act.

4. As against this position, the Commissioner (Appeals), after a detailed examination, had accepted the proposition made by the appellants to the effect that since M/s. Adishakti International Pvt.

Ltd. had not passed on the incidence of higher payment of duty to their respective customers in terms of Section 11B(2), the claim is not hit by the clause of unjust enrichment and allowed the appeal. The Revenue appeal challenges the findings of the Commissioner (Appeals).

5. I have considered the rival contentions. The issue to be decided is as to whether or not the Commissioner (Appeals) was right in accepting the appellants' plea that the clause of unjust enrichment is not applicable in the instant case. As already stated, the status of the appellants is that of a manufacturer without an iota of doubt, though the manufacturing activity is undertaken on a job work basis. Having admitted this position the Commissioner (appeals) was not required to go beyond the Clause (d) of Section 11B(2) of the Act, which is applicable to a "manufacturer" as against Clause (e) which applies to "a person". The said position has been reiterated by the High Court in terms of the citations submitted by the appellants in the case of Commissioner of Central Excise, Chennai vs. Addison & Company Limited reported in 2003 (161) ELT 400 (Tri.-Chennai). The para 11 of the High Courts order as extracted in para 6 of the Tribunal's judgment referred to above, reads as under:- "Where the claimant is a manufacturer, the clause applicable would be Clause (d) of the proviso to 11B(2). That clause refers to "duty of excise paid by the manufacturer, if he had not passed on incidence of such duty to any other person." 6. On the basis of the analysis made by the High Court also, it is obvious that when the appellants have claimed the refund as a manufacturer, only that person viz. "manufacture" has to show that, he has not passed on the incidence of such duty to any other person. In this case, it is admitted position that the appellants have collected a price inclusive of higher duty from their customer, namely M/s.

Adishakti International. It is nobody's case that M/s. Adishakti and the appellants are the same persons. Having reached this position it was not appropriate for the Commissioner (Appeals) to examine further evidence as to whether or not M/s.

Adishakti had passed on the incidence of higher payment they made to the appellants. Accordingly, I hold that the order passed by the Commissioner (Appeals) was totally illegal and the same deserves to be set aside.

7. Consequently, the Revenue's appeal succeeds and the impugned order in appeal is therefore set aside.