Vip Industries Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-03-2004

Judge : R K Jeet

Appellant : Vip Industries Ltd.

Respondent : C.C.E.

Judgement :

1. This appeal is directed against the Order-in-Appeal No. (sic) 376/96 dated 9.10.96 passed by the Commissioner (Appeals), Central Excise, Pune. Commissioner (Appeals) held that the appellants have not discharged the burden of proof that the incidence of duty has not been passed on to any other person. In view of this, the refund of duty claimed by them was held a not admissible to them.

2. Learned Advocate Shri C.S. Lodha appearing on behalf of the appellant has invited my attention to para 1 of the impugned order wherein there is a mention that the Additional Commissioner of Central Excise and Customs held that the claimant cannot demonstrate any documentary proof to establish that the incidence of duty was not passed on to their customers. Learned Counsel has also invited my attention to the judgment of the Apex Court in the matter of Union of India v. Solar Pesticide Pvt. Ltd. - 2000 (116) ELT 401 (SC) [Para Nos.

28, 30 and 33] wherein it was held that the Tribunal did not go into the question as to whether excess duty had been passed on or not and the Tribunal was asked to decide the appeal afresh. Learned Counsel for the appellant wanted that their case be remanded back to the original authority so that they would be able to demonstrate well that the incidence of duty has not been passed on to any other person.

3. Heard Shri Chandan, learned JDR and he has no objection to the remand of the case to the original authority.

4. I have considered the submissions made by both sides and the case records. I come to the conclusion that the burden of proof of incidence of duty has not been demonstrated as could be seen from the impugned order as well as from the Order-in-Original. I am also inclined to accept the submission made by the learned Counsel that it was not felt necessary for them to demonstrate whether incidence of duty has been passed on to their customer in view of the decision of Solar Pesticide Pvt. Ltd. decided by the Hon'ble Bombay High Court which was in their favour. Since the Bombay High Court judgment has been set aside by the Hon'ble Apex Court, the Apex Court in paras 28, 30 and 33 have ruled that the question as to whether the principle of unjust enrichment would apply or not has to be gone into if the same has not been addressed before the original authority or the Appellate authority. I, therefore, allow the appeal by remand of the case to the original authority and set aside the impugned order. Appellant should demonstrate and produce evidence in support of the submission that incidence of duty has not been passed on to any other person and that unjust enrichment would not be applicable to the facts of the case.