

**Airlight Electronics Pvt. Ltd. Vs. Cce**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-18-2004

**Reported in :** (2005)(98)ECC319

**Judge :** S Kang, N T C.N.B.

**Appellant :** Airlight Electronics Pvt. Ltd.

**Respondent :** Cce

**Judgement :**

2. The appellant filed these appeals against Order-in-Appeal passed by the Commissioner (Appeals). Since common issue is raised in these appeals, therefore, they are being taken up together.

3. The brief facts of the case are as under. The appellant filed a refund claim on 13.12.2002 in pursuance to the Final Order passed by the Tribunal, whereby the demand and penalty imposed on the appellant were set aside. During the proceedings which were set aside by the Tribunal, the appellant deposited an amount of Rs. 4,30,326. On 16.11.99 another amount of Rs. 7,48,416 was deposited in pursuance to the stay order passed by the Tribunal for hearing of the appeal.

4. After filing the refund on 13.12.2002 the appellant took credit in their Modvat account on 16.1.2003. Two show-cause notices were issued to the appellant. A show-cause notice dated 6.2.2003 was issued for rejection of the refund and the

other show-cause notice was issued on 5.6.2003 for recovery of the credit which was taken suo moto. On 6.6.2003 the refund was rejected. The adjudicating authority rejected the refund claim filed by the appellant on the ground that the refund claim is time-barred and the appellant had not proved that the burden of duty has not been passed on to the customers. The demand was confirmed in respect of the credit taken by the appellant on the ground that the credit was taken without permission.

6. The contention of the appellant is that the amount regarding which the refund was filed was paid during the pendency of the adjudication order and in pursuance to the stay order passed by the Tribunal duty was paid after clearance of the goods. Therefore, there is no question of unjust enrichment and time bar as the refund was filed, in pursuance to the final order passed by the Tribunal as a consequential relief.

Therefore, the stand of the Revenue that the demand is time-barred and there was unjust enrichment is not sustainable. In pursuance to the Final Order, the appellants are entitled for the credit. Therefore, the credit cannot be denied on the ground that the same was taken without permission. The appellant relied upon the decision of the Hon'ble Gujarat High Court in the case of Parle International Ltd. v. Union of India .

7. The contention of the Revenue is that the credit was taken without permission and the duty was not paid under protest, therefore, the impugned orders are sustainable. The contention of the Revenue is also that even in pursuance to the order passed by the Tribunal the appellants are to prove that the burden of duty has not been passed on to their customers.

8. The undisputed facts are that as a consequential relief to the orders passed by the Tribunal, the appellant filed a refund claim and taken the credit in their Modvat account. The denial of refund on the ground of limitation by the Revenue authority is not sustainable as the amount in dispute is deposited during the pendency of the adjudication proceedings and a portion of the amount is deposited in pursuance to the stay order passed by the Tribunal. When the refund claim is filed in pursuance to the order passed by the Tribunal or Court, the Revenue cannot

reject the same on the ground of limitation.

9. On the issue of unjust enrichment it is admitted by the Revenue that duty was paid subsequent to the clearance of the goods and a part of the amount is paid in pursuance to the stay order passed by the Tribunal. We find that the Hon'ble Gujarat High Court in the case of Parle International Ltd. held that it cannot be said that the assessee has recovered amount from its customers the amounts subsequently deposited with the Revenue and this enriched itself by collecting such amount from the customers. The Hon'ble High Court further held that the amount deposited by the assessee during adjudication proceedings is to be regarded as deposit and not duty and doctrine of unjust enrichment is not applicable to such deposit nor provisions of Rule 233 B of Central Excise Rules are applicable. In view of above decision the appellants are entitled for the amount deposited during the adjudication proceedings and the amount deposited in pursuance to the stay order passed by the Tribunal where the demand was set aside by the Tribunal and the assessee is entitled for taking credit of such amount.

The impugned orders are set aside and the appeals are allowed.

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