Commissioner of Central Excise Vs. Ipca Laboratories

Commissioner of Central Excise Vs. Ipca Laboratories

SooperKanoon Citation : sooperkanoon.com/36691

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-05-2004

Reported in : (2005)(180)ELT33TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : ipca Laboratories

Judgement :

1. This order will dispose of all the above captioned three appeals which have been directed by the Revenue against the common order-in-appeal vide which the Commissioner (Appeals) has allowed the three refund claims of the respondents.

2. The learned SDR has contested the correctness of the impugned order on two grounds; firstly that the assessments of the respondents were final and since they did not challenge the assessment orders, could not claim the refund of the duty. He has relied upon the ratio of the law laid down in the case of S. Kumars Ltd. v. CCE, Indore, 2002 (141) E.L.T. 146; Hindustan Wires Ltd. v. CCE, Delhi-II, 2003 (151) E.L.T.679; and Traco Cable Co. Ltd. v. CCE, Cochin, 2004 (172) E.L.T. 33. He has also relied upon the Ministry's Circular bearing No.354/81/2000/TRU, dated 30-6-2000 under which the respondents were required to ask for the provisional assessment before the clearance of the goods, which they did not do.

3. Secondly, that the doctrine of unjust enrichment is applicable to the case of the respondents. He has contended that under this doctrine also, the respondents are not entitled for the refund of the duty. He has relied upon the Apex Court judgment in the case of MRF Ltd. v. CCE, Madras, 1997 (92) E.L.T. 309 (S.C) and Tribunal's judgment in the case of M/s. Aristocraft International Pvt. Ltd. v. CCE, 2002 (139) E.L.T.699 which had been approved by the Apex Court also as reported in 2004 (167) E.L.T. A97 (S.C.) 4. I have gone through the record and heard the learned Counsel also.

In my view, none of the contentions raised by the learned SDR deserve to be accepted. The perusal of the order-in-original reveals that the adjudicating authority for rejecting the refund claims recorded the findings that the respondents failed to disclose the intention of allowing discount to their dealers, to the Central Excise Department and also did not make request for provisional assessment as per the instructions contained in para 9 of the Ministry's letter dated 30-6-2000 (referred to above). But these findings of the adjudicating authority had been reversed by the Commissioner (Appeals) by holding that the adjudicating authority had not pointed out any legal provision to corroborate its view that the respondents were required to disclose the intention of allowing discount to the dealers to the Central Excise Department, when the procedure of filing of price list, price declaration and approval thereof was no more in existence at the relevant time. He has also observed that the respondents issued letters in this regard to the dealers and placed copies of some of the letters on the record. The respondents gave the quantity discount at the time of sale of their goods at the depot to their dealers and this was permissible under the law. They were not required to ask for the provisional assessment in terms of para 9 of the Ministry's letter dated 30-6-2000, referred to by the learned SDR, as the quantity discount was given by them at the time of very sale of the goods to the buyers. The Commissioner (Appeals) has rightly observed that the provisional assessment would be required only where the assessees claims that the discount of any description for a transaction was not readily known, but would be known only subsequently as for example - a year end discount. He has also, in my view, rightly held that para 9 of the Ministry's above said letter is not attracted to the case of the appellants. He has correctly not accepted the findings of the adjudicating authority that the RT-12 returns filed by the respondents were finally assessed, for want of any corroborative evidence on the record. The adjudicating authority neither referred to any order passed to that effect in the order-in-original, nor such order was produced by the Department even before the Commissioner (Appeals).

5. In the light of the discussion made above, the ratio of the law laid down, in all the cases relied upon by the learned SDR, referred to above, is not attracted to the facts of the case. In those cases what has been observed is that where the assessment had been final, the assessee is duty bound to challenge the same before claiming the refund of duty. In the case of Hindustan Wires Ltd., supra, it has been also observed that where the assessee had knowledge at the time of clearance that the price of the goods was provisional, he must ask for provisional assessment. But such is not the position in the case in hand.

6. The second contention of the learned SDR that the refund claims of the respondents are hit by principle of unjust enrichment also cannot be accepted. The adjudicating authority passed one line order in this regard, by stating that the respondents failed to submit C.A.certificate regarding the non-passing of incidence of duty to the buyers. But the Commissioner (Appeals) has rightly not accepted this one line finding as the respondents had produced the C.A. certificate which revealed that the incidence of duty was not passed on by them to the buyers. They gave the quantity discount to their buyers without charging even any price in respect thereof, at the time of sale of the goods to them, from the depot. The correctness of the C.A. certificate remains unchallenged by the Revenue and as such the Commissioner (Appeals) has rightly accepted the same.

7. In the light of the discussion made above, the impugned order passed by the Commissioner (Appeals) is perfectly valid and the same is upheld. The appeals of the Revenue are dismissed.