Cce Vs. Alcobex Metals Ltd.

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SooperKanoon Citation : sooperkanoon.com/36764

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-11-2004

Reported in : (2004)(117)LC964Tri(Delhi)

Judge : A T V.K., P Bajaj

Appellant : Cce

Respondent : Alcobex Metals Ltd.

Judgement :
1. The issue involved in this appeal, filed by the Revenue, is whether the price of excisable goods charged by M/s. Alcobex Metals Ltd., is to be treated as cum-duty price for the purpose of levying the Central Excise duty.

2. We heard Sh. R.C. Sankhla, learned S.D.R. for the Revenue and Shr.

B.L. Narasimhan, learned Advocate for the Respondents. The Respondents manufacture brass and copper articles and during the process of manufacture, industrial dust also comes into existence; they had cleared the said industrial dust without payment of duty. A show cause notice was, therefore, issued to them for demand of Central Excise duty. The Commissioner of Central Excise, under the impugned Order, has held that the industrial dust is classifiable under Heading 26.20 of the Central Excise Tariff and duty is payable by the Respondents. He, however, in view of the decision of the Supreme Court in the case of CCE, Delhi v. Maruti Udyog Ltd. , has treated the price as cum-duty price and confirmed the demand of duty of Rs. 25,49,545/- instead of Rs. 29,69,361/-. The Revenue has come in appeal contending that the Revenue has sought review and reconsideration of the judgment in the case of Maruti Udyog Ltd. and the Supreme Court has admitted the review appeal. It is also the contention of the Revenue that the judgment in the case of Srichakra Tyre Ltd. v. CCE and Maruti Udyog Ltd., 4. After considering the submissions of both the sides, we observe that it has not been controverted by the Revenue that the Larger Bench of the Tribunal in the case of Srichakra Tyres Ltd. and Ors. v. CCE, Madras subsequent to sale of goods, is to be abated from cum-duty price actually received. The Supreme Court has dismissed the Civil appeal filed by the Revenue against the said decision as . The Supreme Court has, again, in the case of CCE v.Maruti Udyog Ltd. (supra), has held that "the sale price realised by the Respondents has to be regarded as the entire price inclusive of excise duty because it is the Respondents, who have, by necessary implication, taken on the liability to pay all taxes on the goods sold and have not sought to realise any sum in addition to the price obtained by it from the purchaser. The purchaser was under no obligation to pay any amount in excess of what has already been paid as the price of the scrap. In these circumstances, the Tribunal was right in directing that the Respondents are entitled to the benefit of Section 4(4)(d) of the Central Excise Act. The mere fact that the Revenue has filed the review appeals, which haye been admitted for hearing by the Supreme Court, will not make a judgment of the Supreme Court as inoperative in absence of any stay granted by the Hon''ble Supreme Court. Accordingly, we find no merit in the appeal, which is rejected.