

Delton Cable Ltd. Vs. Commissioner of Central Excise

Delton Cable Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/36809

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-14-2004

Reported in : (2005)(185)ELT301TriDel

Judge : A T V.K., P Bajaj

Appellant : Delton Cable Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The issue involved in this Appeal filed by M/s. Delton Cables Ltd. is whether the bar of unjust enrichment is applicable to the refund of Central Excise duty claimed by them.

2. Shri S.C. Kamra, learned Advocate, submitted that the appellants manufacture wires and cables for the Department of Telecommunication; that the price for supply of wires and cables is a composite price i.e.

inclusive of all levies, taxes, freight, insurance, packing and forwarding etc. that while discharging the duty liability they, through oversight did not exclude the cost of transportation from transaction value; that as a result of which they had paid excess excise duty to the extent of Rs. 12,61,064/-; that accordingly, they filed the refund claim on 12-9-2001 claiming refund of duty paid in excess; that the Deputy Commissioner under Order-in-Original No. 61/2002, dated 22-10-2002 has rejected their refund claim holding that the duty is not liable to be refunded to them

as the incidence of duty has not been suffered by them; that on Appeal Commissioner (Appeals) also under the impugned order has rejected their refund claim on merits, as they had not shown the cost of transportation separately in the invoice and thus have not fulfilled the condition of Rule 5 of the Central Excise Valuation Rules, 2000. Learned Advocate, further, submitted that the doctrine of unjust enrichment is not applicable in the present matter; that since the rate awarded by the Department of Telecommunication was composite inclusive of duties, freight, etc., doctrine of unjust enrichment is not applicable; that since no duty was payable by them on freight element recovered from the Department of Telecommunication, the Department of Telecommunication has reimbursed that much of duty of excise which is legally payable to the Government on the assessable value i.e. without including the freight element; that in other words, the Appellants has not realised excise duty portion on the freight element from their customers. Finally, he submitted that it has been held by the Tribunal in the case of Shasun Chemicals and Drugs Ltd. v.CCE, Pondicherry [2003 (158) E.L.T. 520 (T) = 2003 (58) RLT 884] that under Rule 5 of the Central Excise Valuation Rules, 2000, the actual freight has to be deducted even in those cases where assessee has claimed equalized freight and the cost of transportation has not been shown separately in the invoice. Reliance has also been placed on the decision in the case of West Coast Paper Mills Ltd. v. CCE, Bangalore, [2004 (172) E.L.T. 493 (T) = 2004 (64) RLT 482 (CESTAT)] and Kisan Mouldings Ltd. v. CCE, Mumbai-IV 3. Countering the arguments, Shri S.M. Tata, learned Senior Departmental Representative, submitted that it is an admitted fact that the price shown in the invoice is a composite price and the element of duty has not been shown separately; that incidence of entire duty has, thus been passed on to the Customers; that the appellants have not succeeded in establishing by bringing on record the material evidence to show that the incidence of duty was borne by them; that accordingly, bar of unjust enrichment will be applicable in the present matter.

4. We have considered the submissions of both the sides. The appellants have claimed the refund of duty on the ground that the duty initially was paid by them on the price of the wires and cables inclusive of freight element. The entire duty paid by them has been mentioned in the invoice which was issued to their customers.

As per the provisions of Section 11B(1) of the Central Excise Act, the burden has been cast upon the person who claims the refund of duty to prove that the amount of duty of incidence in relation to which refund is claimed was paid by him and the incidence of such duty had not been passed on by him to any other person. No material has been brought on record by the Appellants to establish that incidence of duty was borne by them only. They have merely mentioned in their grounds of Appeal that the Customers i.e.

Department of Telecommunication has reimbursed only that much of duty of excise which was legally payable to the Government without supporting the same with any evidence or document. In absence of any proof, we hold that the bar of unjust enrichment is applicable and the amount of refund is not payable to the Appellants. The Appeal is therefore, rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com