Abb Ltd. Vs. Commissioner of Customs

Abb Ltd. Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/36850

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-18-2004

Reported in : (2005)(181)ELT71TriDel

Judge : J Balasundaram, Vice-, A T V.K.

Appellant : Abb Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The issue involved in these two appeals, filed by M/s. ABB Ltd., is whether the refund of duty claimed by them is to be sanctioned to them.

2. Shri R. Parthasarthy, learned Advocate, submitted that the Appellants have imported certain parts and components for use in the manufacture of transformers from Sweden; that though the invoice value was mentioned in Sweden Krones, they erroneously applied exchange rate of Swiss Francs which resulted in payment of duty in excess; that though the refund was sanctioned to them, the Adjudicating Authority directed the amount of refund to be credited to the Consumer Welfare Fund; that Commissioner (Appeals) also under the impugned order has rejected their appeals on the ground that the order of assessment made by proper officer stands as no correction as required by Section 154 of the Customs Act has been made nor any Appeal was filed. The learned Advocate, further, submitted that the appellants have shown the excess customs duty paid by them as sundry recoverable in their books of accounts; that thus the said excess

duty amount had not been debited to the Profit and Loss Account and had also not been included in the costing of the finished products; that as such burden of excess duty has not been passed on to the customers. In this regard, he referred to the Certificate dated 7-3-2003 given by M/s. Jayesh Desai & Co., Chartered Accountants and relied upon the decision in the case of Hero Honda Motors Ltd. v. CCE, 2002 (126) E.L.T. 1014 wherein the Tribunal, relying upon the Chartered Accountant's Certificate and Balance Sheet has held that the excess duty shown as recoverable in the Balance Sheet indicates that the Appellants had not passed on the incidence of duty to the Customers. He finally submitted that the Commissioner (Appeals) has rejected their Appeal on a new ground that they had not filed any application for correction of clerical mistake; that thus the impugned order is. beyond the scope of the proceedings in the present matters; that since the Deputy Commissioner who had adjudicated the matter has satisfied himself that excess amount has been paid, it has been accepted that due to clerical mistake excess amount of duty was paid by the Appellants; that the position that excess duty was paid has become final which was not challenged by the Department. He relied upon the decision in Keshari Steels v. C.C., Bombay, 2000 (115) E.L.T. 320 (Bom.) wherein the Bombay High Court has held that Section 154 specifically provides for correction of clerical or arithmetical mistake in any decision or Order passed by an officer of Customs under the Act and once that is corrected, the petitioner is entitled to have refund of the amount which is paid due to an arithmetical error. He mentioned that the SLP filed by the Revenue against the said judgment of the Bombay High Court has been dismissed by the Supreme Court on merit as reported in 2000 (121) E.L.T. A139.

3. Countering the arguments, Shri S.M. Tata, learned Senior Departmental Representative, submitted that the Appellants have not challenged the assessment in Appeal and thus they can not claim the refund of duty; that since the assessment has attained finality, the refund claim is not maintainable. He relied upon the decision in the case of Priya Blue Industries Ltd. v. CC (P), 2004 (96) ECC 217 S.C.wherein it has been held that once an order of assessment is passed the duty would be payable as per that order and unless that order of assessment has been reversed and/or nullified in an Appeal, that order stands. He also contended that the bar of unjust enrichment would be applicable to the claim

for refund of duty.

4. We have considered the submissions of both the sides. It has not been disputed by the Revenue that the claims for refund of Customs duty have been filed on the ground that the rate of exchange was calculated on the basis of Swiss Franc instead of Swedish Krones. Thus duty in excess was paid on account of clerical errors. Section 154 of the Customs Act provides that clerical or arithmetical mistakes in any decision or order passed by any officer of Customs may be corrected at any time by such officer or the successors in office of such officer.

The Deputy Commissioner has accepted the fact that "importers claim for refund is eligible unless they Rule out unjust enrichment." The learned Advocate has rightly emphasised that the fact of admissibility of refund claim has attained finality as the same has not been challenged by the Department in Appeal. It is, therefore, not open to the Commissioner (Appeals) to reject the refund claims on the ground that the provisions of Section 154 were not complied with. The judgment in the case of Priya Blue Industries Ltd. is also not applicable as Section 154 of the Customs Act, independent of Appeal, provides for correction of clerical or arithmetical mistakes in any decision or order by an officer of Customs. The Bombay High Court has held in Keshari Steels, supra, that once the clerical or arithmetic mistake is corrected, the assessee is "entitled to have refund of the said amount which is paid due to an arithmetical mistake". The SLP preferred by Revenue has also been dismissed by the Supreme Court. Thus the refunds of excess amount of duty is admissible.

5. Coming to the applicability of bar of unjust enrichment, we find that the Appellants have contended that the excess duty paid by them is appearing as sundry recoverable in their books of accounts which has also been certified by the Chartered Accountants. These submissions of the Appellants have not been considered by the Adjudicating Authority in the Order-in-Appeal at all. We, therefore, set aside the impugned order and remand both the appeals to the jurisdictional Adjudicating Authority for examining as to whether bar of unjust enrichment is applicable and decide the matters afresh after affording a reasonable opportunity of hearing to the Appellants.