Sunbeam Auto Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-04-2004

Reported in : (2005)(185)ELT297TriDel

Judge : S Kang, Vice-

Appellant : Sunbeam Auto Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. The appellant filed this appeal against the order-in-appeal whereby a refund claim of Rs. 2,87,374/- is credited to the Consumer Welfare Fund on the ground that the appellant failed to discharge the onus that burden of duty has not been passed on to the customers.

2. The contention of the appellant is that in this case the Revenue raised the objection that notional interest in respect of the advance received from the customers is to be added to the assessable value of the goods cleared by the appellant. On this objection the appellant on 8-1-1997 debited the amount in question. Thereafter a SCN was issued for the year 1993-1994 to 31-3-1996 for demanding duty. The adjudicating authority confirming the demand and on appeal filed by the appellant, the Commissioner (Appeals) allowed the appeal. In pursuance to order-in-appeal, the appellant filed the refund claim. The contention of the appellant is that as the amount in question is debited on 8-1-1997 i.e. subsequent to the clearance of goods, therefore, principles of unjust enrichment

are not applicable. Further the contention of the appellant is that in the impugned order, Commissioner (Appeals) held that this amount in question is mentioned in their record as selling expenses and as the selling expenses are always recovered from their customers, the claim of appellant is not available. The contention is that as the amount is to be mentioned in somewhere in the record and the same is mentioned as selling expenses, which are paid from their profit account, therefore, refund claim cannot be rejected on the ground that burden of duty has been passed on to the customers.

3. The contention of the revenue is that in the account, the amount in question is mentioned as selling expenses and selling expenses always included in the sale price of the goods, therefore, the Commissioner has rightly credited the amount to Consumer Welfare Fund.

4. Admitted facts of the case are that amount in question is debited on 8-1-1997 i.e. after the clearance of the goods. In this regard the Tribunal in the case of Plas Pack Inds. and Ors. v. CCE reported in 2004 (167) E.L.T. 422 (T.) : 2004 (63) RLT 207 held that the presumption as to burden of duty has been passed on to the customers will not be attracted when duty is paid subsequent to the clearance of the goods.

5. Further the appellant only mentioning this amount in sale expense.

As the amount in question is deposited by the appellant after the period in dispute and that was after the clearance of the goods, therefore, in view of the decision of the Tribunal, the principles of unjust enrichment are not applicable. Further the appellant is keeping this amount in their account as sale expenses and some were deducted out of their profit, therefore, the refund claim cannot be denied on this ground also. The impugned order is set aside and the appeal is allowed.