

Assistant Engineer (Civil), Pcc Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-03-2004

Reported in : (2005)(99)ECC554

Judge : Author: P Bajaj

Appellant : Assistant Engineer (Civil), Pcc

Respondent : Cce

Judgement :

1. None is present on behalf of the appellant. On the last date of hearing. Shri Anil Vyas, Additional S.E. appeared on behalf of the appellant and the appeal was adjourned for today. But today neither he nor the appellant himself has put in appearance. No request for adjournment has been received. Therefore, we proceed to decide the appeal after hearing the learned SDR.2. The controversy in this appeal relates to the refund claim of duty lodged by the appellant. The Id. Commr. (Appeals) has dismissed the claim on two grounds. Firstly, it is time barred. Secondly, it is hit by principle of unjust enrichment.

3. We have gone through the record and in our view, the order passed by the Commissioner (Appeals) is perfectly valid. We find that the duty was paid voluntarily by the appellant. The excess payment of duty on his part occurred on account of reduction of excise duty from 18% to 16% ad valorem from 1.3.99 which came into force on presentation of the Annual Budget. The appellant however continued to pay duty at the rate of 18%. There is nothing on the record

to suggest if the duty was paid under protest. Therefore, from the date of the payment, the refund claim was not filed within time prescribed under Section 11B(1) of the Act. The plea of the appellants that it was not the duty but money which was paid by him in excess and as such, Section 11B did not apply to their case, in our view, is wholly misconceived. It was only the excess duty which was paid by him and not the simple money in any form, to the Revenue. Therefore, the provisions of Section 11B did apply to the case.

4. No doubt, the goods were used captively by the appellant in their PCC Pole factory but still the principle of unjust enrichment is applicable to his case in view of the Apex Court's decision in the case of Union of India v. Solar Pesticide Pvt. Ltd., 2000 (68) ECC 25 (SC): 2000 (116) ELT 401 (SC) wherein it has been observed that bar of unjust enrichment is attracted to the case where there had been captive use of the goods by the assessee. That being so, the appellant was required to prove that incidence of duty after adding to the cost of final products has not been passed on to the customers, but has failed to prove so.

The ratio of law laid down in Mafatlal Ind. v. Union of India, 2002 (83) ECC 85 (SC): 1997 (89) ELT 247 (SC) on which the appellant placed reliance before the Commissioner (Appeals), as we find from the impugned order, goes against him instead of helping him in claiming refund of the excess amount, without crossing the bar of unjust enrichment. The plea of the appellant that his assessment was provisional had been also rightly rejected by the Commissioner (Appeals) for want of any evidence to substantiate the same.

5. In the light of the discussions made above, we find no illegality in the impugned order and the same is upheld. The appeal of the appellant is dismissed.

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