

indag Rubber Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-03-2005

Judge : S Kang, Vice, N T C.N.B.

Appellant : indag Rubber Ltd.

Respondent : Cce

Judgement :

1. Heard both sides. The appellant filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals). In the impugned order, six refund claims were rejected on the ground that time bar as well as on the principles of unjust enrichment.

2. The contention of the appellant is that they filed a classification list w.e.f. 10.3.87 claiming the classification of Reversal Spray Compound under heading 35.06 of the tariff assessments were remained provisional during this period and proper officer vide order dt.

23.2.89 finalised the assessments and held that the Reversal Spray Compound is classifiable under Heading 4005 of the tariff and directed the appellant to deposit the differential duty. In the month of June'89 and July'89, the appellant paid the amount of Rs. 6,99,316 in respect of the clearances made during the period 10.2.87 to 28.2.89, the appellant also started paying duty under protest under Heading 4005 of Central Excise Tariff. The appellant challenged the order dated 23.2.89 passed by the Asstt. Commissioner before Commissioner (Appeals) and

the Commissioner (Appeals) dismissed the appeal. Thereafter, the appellant approached the Tribunal and Tribunal vide order dt. 14.8.97 allowed the appeal filed by the appellant by saying that Reversal Spray Compound is classifiable under heading 35.06 of the Central Excise Tariff. Revenue challenged the order passed by the Tribunal and the Hon'ble Supreme Court dismissed the appeal vide its order dt. 30.3.98. In pursuance of the order, the appellant filed this refund claim. The contention of the appellant is that refund claim is not time barred in respect of the first claim of Rs. 6,99,316. In pursuance to the order passed by the Tribunal as consequential relief and as the appellants were paying duty under protest which is evident from the duty paying documents, as well as from the fact that they had challenged the order passed by the Asstt. Commissioner before the Commissioner (Appeals) and before the Tribunal, therefore, refund cannot be rejected as time barred.

3. On the ground of unjust enrichment, the contention of the appellant is that the amount of Rs. 6,99,316 was paid after the clearance of goods during the month of June & July'89 in pursuance to the finalisation of the assessment order, therefore, for this amount the principles of unjust enrichment are not applicable. In respect of the other refund claim, the contention of the appellant is that the price of the goods is the same during the period when they were paying duty at higher rate and during the period after the decision of the Tribunal, they were paying at lower rate. However, the burden of duty has not been passed on to their customers.

4. The contention of the revenue is that refund claims are filed after six months from the date of payment duty hence all time barred. The contention of the revenue is that the price remains the same during the goods cleared at the higher rate of duty and during the period less duty is paid is not ground for say the burden of duty has not been passed. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of CCE, Mumbai-II v. Allied Photographies India Ltd. .

5. In this case we find that refund claims were rejected on the ground of time bar as well as the ground unjust enrichment. The appellant challenged the finalisation of assessment order and got an order in their favour from Tribunal. The refund claim is filed as consequential relief as per the order passed the Tribunal. The

appellants are paying duty under protest and by way of challenging the assessment order in the higher forum. In these circumstances, the finding in the impugned order is that the claims are time barred are not sustainable hence set aside.

6. On the question of unjust enrichment, the amount of Rs. 6,99,316 was paid during the month of June'89 to July'89 for the period prior to 23.2.89 i.e. after the finalisation of the assessment and after the clearance of goods, therefore, as the appellant paid this amount after the clearance of the goods, therefore, the principles of unjust enrichment are not applicable in respect of this amount of Rs. 6,99,316.

7. In respect of the other refund claims, the contention of the appellant is that they were clearing the goods at the same price when they were paying duty at higher rate and during the period, they were paying duty at the lower rate. We find that this issue had come up before the Hon'ble Supreme Court in the case of CCE, Mumbai v. Allied Photographics India Ltd. (supra) and Hon'ble Supreme Court rejected this contention. The Hon'ble Supreme Court held as under: 18. Before concluding, we may state that uniformity in price before and after the assessment does not lead to the inevitable conclusion that incidence of duty has not been passed on to the buyer as such uniformity may be due to various factors. Hence, even on merits, the respondent has failed to make out a case for refund. Since relevant factors stated above have not been examined by the authorities below, we do not find merit in the contention of the respondent that this Court should not interfere under Article 136 of the Constitution in view of the concurrent finding of fact.

8. In view of the above decision of the Hon'ble Supreme Court, we find no merit in the contention of the appellant in respect of the remaining five refund claims. Therefore, the impugned order in respect of five refund claim is upheld. The appeal is disposed of as indicated above.