Commissioner of Central Excise Vs. Parle Beverages

Commissioner of Central Excise Vs. Parle Beverages

SooperKanoon Citation : sooperkanoon.com/38067

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-11-2005

Reported in : (2005)(184)ELT283Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Parle Beverages

Judgement :

1. Revenue is in appeal. The respondent are an assessee engaged in the manufacture of Aerrater Water. Show cause notice was issued to them proposing recovery of differential duty on account of deductions claimed in terms of Section 4 (4) (d) of Central Excise Act, 1944; in respect of Turnover Tax leviable under Sales Tax Act, 1959. It was held by adjudicating authority that turn over tax recovered from customers but not paid / payable to the State Government would form additional consideration in term of Rule 5 of Central Excise (Valuation) Rules, 1975. The demand for differential duty was confirmed by the Deputy Commissioner; Commissioner of Central Excise (Appeals) has allowed the appeal holding that violation Rule 5 of Central Excise (Valuation) Rules, 1975 has no application in the present case since the assessable value could be de ermine under Section 4(1) (a) of under Central Excise Act, 1944. Hence this appeal by Revenue.

2. After hearing both sides and considering the issue involved and considering that the grounds taken in appeal it is found- a) The issue involved is while determining the assessable value for payment of Central Excise duty under Section 4 of Central Excise Act, 1944: whether "Turnover Tax" is an admissible deduction from the wholesale price where it (turnover tax) is not paid / payable because the unit was exempted from payment of Turnover Tax.

"Turnover Tax" is an admissible deduction if it is paid / payable.

The unit was exempted from payment of "Turnover Tax" at the relevant time, as the unit is in a backward area as stated by the assessee in para-2 of their reply dt. 10.10.97 to the show cause notice. No turnover tax thus was payable by the assessee in accordance with law and therefore no deduction could have been claimed from the wholesale price on account of the said turnover tax for calculating the assessable value of the goods. In CCE, Bombay v. Bajaj Auto Ltd. 1997 (93) ELT 705 (T) the Hon'ble Tribunal has held that Sale Tax when exempted was not excludiable from the price and the ratio of the said decision would apply to the present case. Revenue submits, apparently the Commissioner (A) has erred in allowing the deduction on account of turnover tax which was not payable/paid since the unit was exempted from turnover tax & pleads that this view is in line with by the decisions in a) Swati Cables and Conductors (P) Ltd. 1998 (100) ELT 94 (T) b) Bata (I) Ltd. 1996 (84) ELT 164 (SC) & c) Modi Rubber Ltd. 1996 (84) ELT 173 (SC).

b) The Show cause notice in this case dated 28.8.1992 proposing the denial of deduction of Turn over Tax, was issued on the grounds that the same was not recoverable from the Customers in terms of State Sales Tax laws. Whereas. Respondent recovered the same. The liability of Turn over Tax is not in dispute. Section 4 of the Central Excise Act, provides for the deduction of tax paid or payable from the price. In the case of Karnataka Soap & Detergent Ltd. [2001 (133) ELT 196 (Tri-Bang)] it has been held that deduction of Turn over Tax were available irrespective of inclusion or non inclusion in the value and thus view has been held in other cases as -Pieco Electronics and Electricals Ltd. v. CCE, Pune 1994(71) ELT 1053 (Tri)Commissioner of Central Excise v. Asian Paints 2003

(157) ELT 478Wrigley India (P) Ltd. v. CCE, Banglore 2002 (147) ELT 1254 (Tri-Bang)DCM Engineering Products v. CCE, Chandigarh -II 2002 (147) ELT 820 (Tri-Del).

c) It is found that the Basic Manual of Department Instructions on Excisable Manufacture Product, pages 102 & 103 of the 3^rd Edition, wherein based on the opinion of Ministry of Law has been mentioned that the Central Excise & Salt Act does not stipulate the taxes which are not included in the value are which will be passed on to the Consumer. The present proceeding launched and concluded do not consider the above position; the same is therefore not upheld and the proposal to recover duty on the component of Turn over Tax cannot be upheld. The perusal of the grounds does not indicate how and why value in this case cannot be determine under Section 4(1)a and Rule 5 is required to be invoked in the facts of this case. The provisions of Income Tax as regards State Taxes collected in a backward region and not required to be deposited with the State Treasury due to incentive scheme & such amounts not being considered as Income are also not considered in the grounds to taken in this appeal. In this view of the matter we find no merits in the Revenues appeal. The same is required to be dismissed.