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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-2005

Reported in : (2005)(185)ELT70TriDel

Judge : N T C.N.B.

Appellant : industrial Cables (India) Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

2. These two appeals are directed against denial of refund on the ground of unjust enrichment. The appellant's case is that it had rate contract with D.E.S.U, and Eastern Coalfields Limited for supply of wires and cables. The rate contract was on delivery terms i.e. price including excise duty, sales tax and freight.

3. A perusal of the rate contract makes this position clear. However, the appellant discharged Central Excise at the time of clearance of the goods on the rate contract price i.e. price which included freight and other elements which are not required to form part of the assessable value. The submission of the learned Counsel for the appellants' is that it is well settled that question of unjust enrichment does not arise in the case of sale against such prices. Reliance is being placed on the decision of this Tribunal in the case of Indian Oil Corporation Limited v. Commissioner of Central Excise, Vadodara 4. Learned SDR has pointed out that the appellant's invoice would show payment of duty on the entire price. From this, it is to be assumed that the buyer makes payment of full duty. He also

referred to the finding in the impugned order that the price provision has not been challenged in the present case and therefore, no refund application can be filed.

5. In his reply learned Counsel has submitted that the issue of price provision remains covered by the earlier decision in the appellant's own case vide Final order No. 2699-2700/96-A, dated 5-8-1996 [1996 (87) E.L.T. 419 (T)], of the Tribunal and since no appeal filed by the Revenue against this order, the issue cannot be raised.

6. On the question of payment, the learned Counsel referred to para five in the appeal which states that "the appellant has raised the bill to their buyer only at the rate contract is made". It is his submission that in view of this, the question of making payment on the gate pass does not arise.

7. The appeal merits acceptance. The rate contract as well as the statement in the appeal makes it clear that payments were in terms of rate contract and not in terms of the Gate Passes (GPs). Therefore, the question of passing of the entire duty does not arise. The appellant's case is covered by the decision in the Indian Oil Corporation Ltd. (supra). The Revenue cannot also raise the issue of price approval, since that finding had not been challenged. That aspect has attained finality and was no more open in the absence of proceedings.

8. In view of what is stated above, appeals are allowed with consequential relief to the appellants. Since the matter is very old, it is further directed that the refund claim be sanctioned and paid within a period of six weeks from the date of receipt of a copy of this order.

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