

Corning S.A. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-19-2005

Judge : V Agrawal

Appellant : Corning S.A.

Respondent : Cce

Judgement :

1. In this appeal filed by M/s. Corning S.A. the issue involved is whether bar of unjust enrichment is applicable to the refund of Customs duty paid by them in excess.

2. Shri B.L. Narasimhan, learned Advocate, submitted that during the period 1997-2000 the goods imported by the Appellants were assessed to duty provisionally and they were directed to clear the goods on payment of extra duty deposit @ 5% of the duty till 1998 and 1% duty thereafter; that after conducting the investigation by the Special Valuation Branch, the Dy. Commissioner, under Order-in-Original No.10/2000 dated 18.4.2000, ordered that the invoice price was to be raised to the price indicated in the price list subject to quantity discount and all provisional assessment to be finalized accordingly; that after finalization of all bill of entry, they filed a refund claim in respect of duty paid in excess by them which has been rejected by applying bar of unjust enrichment. The learned Advocate further submitted that the bar of unjust enrichment does not apply to the refund arising out of finalization of provisional assessment; that further the entire amount paid as extra duty was shown as 'Deposit with Customs' and was not shown as cost and

charged to the profit and loss account; that the said amount was shown as 'Deposit with Customs' under head 'Current Assets' in Schedule 6 of the balance-sheet; that a receivable or deposit is not an item of cost and is carried forward from year to year; that when the amount is refunded the same will be set off under the head "Deposit with Customs and the account is closed.

He finally mentioned that they had also submitted a certificate from Chartered Accountant clearly indicating that extra duty deposit amount related to imports during the period 1997-2000. He relied upon the decision of the Tribunal in the case of Commissioner of Customs, Air Cargo, New Delhi v. Maruti Udyog Ltd. 3. Countering the arguments Shri P.M. Rao, learned DR, reiterated the findings as contained in the impugned Order wherein the Commissioner (Appeals) has given his finding that the entry in Schedule 6 of the balance sheet does not conclusively indicate that the amount of duty, the refund of which is sought, has not been taken as cost of traded goods under expenses in the profit and loss account.

4. We have considered the submissions of both the sides. It has not been disputed by the Revenue that the duty amount refund of which is sought by the Appellants has been accounted for as current asset and shown as 'Deposit with Customs' in the balance sheet prepared by the Appellants. This fact, in fact, has also been mentioned by the Commissioner (Appeals) in the impugned Order. Once the amount of Customs duty has been shown as Deposit with Customs, the question of charging it as cost in the Profit & Loss Account does not arise. In similar facts and circumstances, the Tribunal in the case of Maruti Udyog Ltd. (supra) has held that the burden of incidence of duty has not been passed on to the buyers in view of the fact that the amount was shown as other current assets in the balance sheet and a certificate from Chartered Accountant was submitted. Following the ratio of the said decision we hold that bar of unjust enrichment is not applicable in the present matter as the excess duty paid by the Appellants had been shown as deposit with the Customs and not passed on to the buyers. The appeal is thus allowed.