

A.K. Spintex Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-20-2005

Reported in : (2005)(192)ELT746TriDel

Judge : V Agrawal

Appellant : A.K. Spintex Ltd.

Respondent : Cce

Judgement :

1. In this appeal filed by M/s. A.K. Spintex Ltd the issue involved is whether bar of Unjust Enrichment applies to the refund of duty sought by them.

2. Shri K.K. Anand, learned Advocate, submitted that the Appellants process man-made fabrics; that they receive grey unprocessed fabric from suppliers; that in term of Notification o. 7/2001-CE(NT) dated 1.3.2001 the get deemed CENVAT Credit in respect of declared inputs used in the manufacture of processed fabrics; that prior to 11.6.2001 the rate of deemed credit was 45% of the duty paid on processed fabric; that w.e.f 11.6.2001 Notification No. 7/2001 was amended by Notification No. 25/2001-CE and the rate of deemed credit was increased to 50%; that as the amendment effect from 1.6.2001 was not known to the Appellants up to 13.6.2001 they continued to make the clearance of the processed fabric on payment of duty @ 55% instead of 50% as they gave only deemed credit benefit @ 45% to their customers; that the customers were aware of the change in the rates of deemed credit and protested against charging of duty @ 55% and they

issued immediately debit notes to the Appellants with a view to take credit of the differential amount of duty in their account; that the Appellants thereafter filed a refund claim of refund of duty of Rs. 61,146/- as the said amount had not been realized from their customer; that the refund claim has been rejected on the ground that the duty liability was passed on to the customers and subsequent credit notes issued to customers does not make the bar of unjust enrichment inapplicable. The learned Advocate further submitted that inclusion of duty has not been passed on to the customers as the customers had protested passing deemed credit @ 45% instead of 50% w.e.f 1.6.2001; that as they had issued the invoices passing on deemed credit only @ 45% the customers had raised debit notes for the differential amount; that, therefore, it cannot be claimed by the Revenue that the incidence of duty was passed on by them to their customers. He finally mentioned that the decision of the Large Bench of the Tribunal in the case of S. Kumar Ltd. v. CCE Indore - 2003 153 ELT 217 (T) supports their case; that it is mentioned in Para 9 of the said decision that "since there is no dispute of the fact that this amount of duty had not been collected by the Appellants, it is not hit by the principle of unjust enrichment".

3. Countering the arguments Shri P.M. Rao, learned D.R., reiterated the findings as contained in the impugned order and emphasized the fact that the Appellants have not produced any proof that their customers in turn had not passed on the incidence of duty now sought to be claimed as refund to their customers.

4. I have considered the submissions of both the sides. There is substantial force in the submissions of the learned Advocate that the incidence of duty has not been passed on by them to their customers who had immediately objected to charging of duty @ 55% instead of 50% w.e.f 11.6.2001. Once the customers of the Appellants has protested to charging of duty more than 50% and issued immediately debit notes which have not been disputed by the Revenue it cannot be claimed that incidence of duty, of which refund is now being sought by the Appellants, has been passed on to the customers. The question of passing the incidence of duty by the circumstances which has not been paid by them to their customers does not arise. Accordingly bar of unjust enrichment does not apply. The appeal is thus allowed.

