Cc Vs. Sudhir Papers Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : May-30-2005

Judge : S Peeran, J T T.K.

Appellant : Cc

Respondent : Sudhir Papers Ltd.

Judgement :

1. All these Revenue appeals challenge the OIA No. 157/2003-Cus dated 21.04.2003 and 276 & 277/2003 dated 23.06.2003 passed by the Commissioner of Customs (Appeals) in favour of the assessee holding that the refunds are not hit by the provisions of unjust enrichment in terms of proviso to Section 27 of the Customs Act. He has followed the Tribunal ruling rendered in the case of Corona Cosmetics & Chemicals - 2000 (118) ELT 356. He has also taken a view that the Cess paid by the assessee had not been passed on to the consumers. He has noted that Rubber Cess, in terms of Rubber Act 1947, is not in terms of Section 27 of the Customs Act and hence, the provisions of unjust enrichment would not apply. On both the accounts, Revenue was aggrieved and has filed these appeals.

3. We have heard both sides in the matter and gone through in detail the pleas made by both sides.

4. The learned Chartered Accountant referred to the Certificates issued by the Chartered Accountants in the matter who have clearly certified that the prices were constant before and after the import and that the Cess paid by the

assessee/importer has not been passed on to the consumers. This piece of evidence has not been controverted by the Revenue. Therefore, in terms of the relied judgment of the assessee, the order passed by the Commissioner is just and proper. Furthermore, we notice that the Larger Bench, in the case of Caprihans India Ltd. Vs. CC, Bombay - 2001 (129) ELT 162 (Tri.-LB), has examined the provisions of the Anti Dumping Duty vis-is provisions contained in Section 9A(2)(b) of Customs Tariff Act and has held that the question of unjust enrichment contained in Customs Act cannot have any impact on the special provisions contained in Section 9A(2) of the Customs Tariff Act. The learned CA pointed out that the provisions of Rubber Act, 1947 are identically to the provisions of Section 9A(2)(b) of Customs Tariff Act and, therefore, the Cess paid is not covered by the provisions of unjust enrichment.

5. On a careful consideration and on examining the provisions, we are satisfied that the findings recorded by the Larger bench in the case of Caprihans India Ltd. would apply to the facts of the case. There is no merit in these Revenue appeals on both the counts placed by them and hence the same are rejected.