

Sriganganagar Bottling Co. Vs. Cc

Sriganganagar Bottling Co. Vs. Cc

SooperKanoon Citation : sooperkanoon.com/39864

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-2005

Judge : S Kang, Vice

Appellant : Sriganganagar Bottling Co.

Respondent : Cc

Judgement :

2. The appellant filed this appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby the refund claim of the appellant was rejected on the ground of unjust enrichment.

3. The contention of the appellant is that they made import of capital goods along with spare parts and the spare parts were separately assessed and the appellant paid duty and also challenged the assessment order. The matter went up to the Tribunal and the Tribunal set aside the assessment order whereby the spare parts are separately assessed.

The appellant filed refund claim in respect of the excess duty paid under Section 27 of the Customs Act. The refund was rejected on the ground of unjust enrichment.

4. The contention of the appellant is that the principles of unjust enrichment are not applicable in the case of capital goods. The appellant submitted that the decision of Hon'ble Supreme Court in the case of Union of India v. Solar Pesticide

Pvt. Ltd. is in respect of the raw material which is captively consumed. The contention is that in the present case the refund is arisen in respect of the capital goods, therefore, the ratio of the above decision is not applicable on the facts of the present case. The appellant also submitted that the sale of the final product remains same prior to payment of duty and after payment of duty, therefore, the appellant had not passed on the burden of duty to their customers.

5. The contention of the Revenue is that the Hon'ble Supreme Court in the case of Union of India v. Solar Pesticide (supra) held that refund in respect of captively consumed goods is also subject to the principles of unjust enrichment. The Revenue also relied upon the decision of Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. v. C. Ex. and Cus.

that doctrine of unjust enrichment is applicable to all refunds even in absence of statutory provision. On merit, the contention of the Revenue is that if the sale price remains same is not conclusive proof that burden of duty has not been passed on to their customers. The Revenue also relied upon the finding of the Commissioner (Appeals) that after the import of the capital goods, sale price had been increased.

6. In this case, the issue is whether principles of unjust enrichment are applicable in respect of the capital goods imported by a manufacturer. The only contention of the appellant is that the ratio of the decision of Hon'ble Supreme Court in the case of Union of India v. Solar Pesticide (supra) are applicable in respect of the raw material.

I find that the issue before the Hon'ble Supreme Court was that whether unjust enrichment is applicable in respect of the captively consumed goods and Hon'ble Supreme Court held that the principles of unjust enrichment are applicable in respect of the captively consumed goods.

Further, I find that the Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. (supra) held as under: From the above discussion, it is clear that the doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. In our opinion, therefore, irrespective of applicability of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which

a person is not otherwise entitled.

Section 11B of the Act or similar provision merely given legislative recognition to this doctrine. That, however, does not mean that in absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the petitioner/appellant to show that he has paid the amount for which relief is sought, he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss.

In view of the above decision of the Hon'ble Supreme Court, the principles of unjust enrichment are applicable even in the case of capital goods imported by the manufacturer.

7. On merits, the only contention of the appellant is that sale price before payment of duty and after payment of duty remains same. There is a finding by the Commissioner (Appeals) that appellant increase the sale price after the import of capital goods. Further, I find that Hon'ble Supreme Court in the case of CCE v. Allied Photographics India Ltd. 166 ELT 3 : 2004 (113) ECR 573 (SC) held that the price remains same during the period, duty was paid at higher rate is not a conclusive proof that burden of duty has not been passed on to the customers. In view of the above decision, I find no merit in the appeal, the same is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com