

Commissioner of Central Excise Vs. Manoj Kumar Agrawal

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-24-2005

Reported in : (2007)8STR95

Judge : S Kang, Vice-

Appellant : Commissioner of Central Excise

Respondent : Manoj Kumar Agrawal

Judgement :

2. The Revenue filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals) whereby the refund claim filed by the respondent was allowed. The Commissioner (Appeals) in the impugned order after going through the account books maintained by the respondent gave a finding of fact that burden of duty has not been passed on by the respondent to their buyers.

3. The contention of the Revenue in the present appeal is that respondent have collected excess amount to the tune of Rs. 22.5% of the basic price which is even more than excise duty and this amount is nothing to excise duty, therefore, the burden of duty has been passed on to their customers.

4. The contention of the respondent is that they had produced the account books where the excise duty paid, regarding which refund is filed is described in their account book 'amount receivable' from the Revenue department as refund. The respondent also submitted that for income-tax purposes the appellant had taken

into consideration difference between the purchase amount recovered from the manufacturer and their selling price as a gross profit. The contention is that in the invoice under which the goods were sold to their customers, element of excise duty is mentioned as Nil.

5. I find that Commissioner (Appeals) in the impugned order after going the account books gave a finding of fact that the respondents have taken the excise duty paid to the manufacturer under the category of 'amount receivable' and that entire amount collected from their buyers over and above the purchase price (without tax) has been taken as gross profit for the income-tax purposes. The Commissioner (Appeals) held as under :- From the details given above it is clear that the appellant have consciously not passed on the excise duty element to their buyers and hence it cannot be concluded that they have passed on duty element in the guise of profit and hence not eligible for refund. As already stated above, the sale price was much below the purchase price including the tax element during the period November, 2002 to January, 2003 and that only from February, 2003 onwards the amount of sale price was higher than the purchase price including the tax elements by about 10% but this does not mean that the excise duty has been passed on to the buyers for the reason that the Appellants have clearly indicated in their book of accounts that the excise duty paid to Nepa Ltd. under the category of 'amount receivable' (from the department as refund) and that they had taken the difference between the purchase price from Nepa Ltd. (without tax) and their selling price to subsequent buyers as gross profit liable to Income-tax. Accordingly based on the material available on the record, I am of the view that the tax burden borne by the Appellants in respect of their purchases of Coal Ash (cinder) from M/s. Nepa Ltd. during the period November, 2002 to February, 2003 has not been passed on their buyers and that they are eligible for the refund claimed.

6. In view of the finding of the Commissioner (Appeals) which is based on the account books maintained by the appellant, I find no infirmity in the impugned order, the appeal is dismissed. The cross-objections are also disposed of in the same manner.