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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-29-2005

Judge : S Kang, Vice-

Appellant : Spbl Limited

Respondent : Commissioner of Central Excise

Judgement :

1. 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.

2. The appellants are engaged in the manufacture of processed Man Made Fabric and filed a refund claim in pursuance to the Notification No.25/2001-CE, dated 11-6-2001 vide which deemed credit admissible on the specified inputs used in the manufacture of processed man made fabric has been increased from 45% to 50%. As a result of which the net duty payable was reduced from 55% to 50%. The net effect of this increase of the deemed credit as the duty was reduced from 8% ad valorem.

3. The contention of the appellant in spite of this during the period 11-6-2001 to 13-6-2001, the appellant continue to paid @ 8.8% instead of 8% ad valorem. The refund claim was rejected on the ground of unjust enrichment. The finding of the lower authorities is that the appellant collected the duty from their customer, therefore, they are not entitled for any refund.

4. The contention of the appellant is that after the amendment their customer immediately objected for charging duty @ 8.8% instead of 8% and only paid 8% of the duty instead of 8.8% as mentioned in the invoices. The contention of the appellant is that just to make correct entries in their accounts, the appellant issued credit notes. The appellant produced copies of the letters issued by their customers to the effect that they had only paid duty @ 8.8%. The contention of the appellant is also that the Commissioner (Appeals) disposed of two appeals one filed by the appellant and the other of M/s. A.K. Spintex Ltd. On appeal filed by M/s. A.K. Spintex Ltd. the Tribunal set aside the impugned order and allowed the appeal vide Final Order No.A/557/05/NB(S), dated 20-4-2005 2005 (192) E.L.T. 746 (T). In these circumstances, the contention is that the impugned order be set aside when by refund claim of the appellant is rejected.

5. The contention of the Revenue is that the invoices issued by the appellant under which the goods were cleared shows the rate of duty @ 8.8%, therefore, subsequent issuance of credit notes will not help the case of the appellant. The Revenue relied upon the decision of the Larger Bench of the Tribunal in the case of S. Kumar's Ltd. v. CCE .

6. In reply, the contention of the appellant is that in the case of S.Kumar's (supra), the Tribunal allowed the refund of the amount which was not collected by the manufacturer and rejected the refund claim where the amount was collected and subsequently credit notes were issued.

7. In this case, there is no dispute that rate of duty was reduced from 8.8% to 8% in view of the increase of 5% rate in the deemed credit with effect from 11-6-2001. The dispute is in respect of three days only when appellant continue to show in the invoices duty @ 8.8%. It also came on record the customer of the appellant objected to the charging of duty @ 8.8% and they had paid only @ 8%. This shows that the appellant had not collected the duty as per the invoices they had only collected 8% of the duty instead of 8.8% as mentioned in the invoices.

The evidence to this effect by way of letters written by the customers was produced before the lower authorities whereby the customers specifically mentioned that they deducted the excess amount charged by the assessee. The

Larger Bench of the Tribunal in the case of S.Kumar's Ltd. held that where the duty has been collected by the manufacturer then subsequent issuance of credit notes will not show that burden of duty has not been passed on to the customers. The Larger Bench also allowed the refund claim of S. Kumar's Ltd. where it was proved that the amount of duty was not collected by them. In the present case also, the amount of duty regarding which refund instead of is not corrected by the supplier. Further, I find that the Tribunal vide order dated 20-4-05 on the appeal filed by the A.K. Spintex Ltd. against the same impugned order held that bar of unjust enrichment does not apply on the facts and circumstances of the case. In these circumstances, as the appellant had not collected duty, therefore, the rejection of the refund on the principles of unjust enrichment is not sustainable and set aside and the appeal is allowed.

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