

C.C.E. Vs. Shree Ram Textile and Processing

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-30-2005

Reported in : (2006)(193)ELT485Tri(Mum.)bai

Judge : A Wadhwa

Appellant : C.C.E.

Respondent : Shree Ram Textile and Processing

Judgement :

1. Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. I have heard Shri N.V.B. Nair Id.

JDR for the Revenue and Shri V.S. Sejpal, Id. Advocate for the Respondent.

2. Briefly stated the facts of the case are that the respondent-assessee is engaged in the processing of textiles.

Commissioner of Central Excise determined the Annual Production capacity for the year 1998-99 including the rail length of the galleries of stenter. The said fixation of annual capacity was the subject matter of several adjudication and appellate orders before the Commissioner and Tribunal, During the pendency of the disputes, duty was being paid by the respondents in accordance with the APC fixed by the authorities. However, after multiple and parallel proceedings at various levels, the dispute on fixation of, APC was settled in favour of the assessee and consequently they became entitled to refund of excess duty paid by

them during the period of dispute. The dispute in the present appeal relates to refund claim of Rs. 4,73,323, which though sanctioned by the Deputy Commissioner vide his impugned order, but was credited to the Consumer Welfare Fund on the ground that the said duty was collected by the respondents from their customers and was hit by the bar of unjust enrichment. However on appeal, Appellate authority set aside the impugned order of Deputy Commissioner of the ground that the provisions of Section 11B are not applicable to duty paid under compounded levy scheme. Hence the present appeal 3. After carefully considering the submissions made by both sides and after going through the impugned order, I find that the Larger Bench of the Tribunal in the case of Mohinder Steels Ltd. v. Commissioner of Central Excise, Chandigarh has held that General provisions of Excise law are not applicable to the compounded levy scheme for collection of duty based on annual capacity of production which is a comprehensive scheme. It was further observed that importing of elements of one scheme of tax administration would be wholly inappropriate as it would disturb the smooth functioning of that unique scheme. The findings were arrived at by relying upon the Hon'ble Supreme Court decision in the case of Commissioner v. Reghuvar (India) Ltd. laying down that limitation provision of Section 11A are not applicable for recovery of irregular Modvat credit as Modvat scheme being a specific and special beneficial scheme, with self contained procedure, manner and method for its implementation providing for its own remedies to any mischief committed by the manufacture in abuses thereof, the provisions of the said special scheme alone will govern such a situation and there is no scope for reading the stipulations contained in a general provision like Section 11A into the provisions of the rules in question which alone will govern in its entirety the enforcement of Modvat scheme. Though the said decision dealt with the issue of applicability of limitation provisions to there specially enacted compounded levy scheme, the ratio of the same would equally apply to the disputed issue of applicability of provisions of unjust enrichment to the refund accruing under the compounded levy scheme.

4. I may also take note of another decision of the Tribunal in the case of Shri Rajendra Rolling Mills holding that Rule 96ZB is a complete code for assessment of duty under the compounded levy scheme and the provisions of Section 11B are not applicable. Similarly in the case of Kothi Steel Ltd. v. Commissioner of Central

Excise, Vadodara it was held that bar of unjust enrichment is not applicable to the duty paid at fixed rate under compounded levy scheme without having actual relation to actual clearance.

5. It is further seen that the provisions of Section 11B are applicable to refund of duty excess paid relatable to actual clearance of the goods. Payment of duty under the compounded levy scheme in terms of the annual production capacity fixed is not relatable to clearance and sale. Assessee working under the said scheme is duty bound to pay a particular quantum of duty irrespective of the actual clearance. As such it cannot be said that the excess duty paid is relatable to any particular clearances and the same stands recovered from the consumer.

6. In view of the above discussions it is held that unjust enrichment bar is not applicable to the refund of duty excess paid under the compounded levy scheme. Accordingly, the appeal file by the Revenue is rejected.

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