

I.O.C. Ltd. vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-21-2005

Judge : S Kang, Vice, S T T.V.

Appellant : i.O.C. Ltd.

Respondent : C.C.E.

Judgement :

1. Heard both sides. The appellant filed these appeals against the common impugned order. In this case the appellant had three depots namely Hanumangarh, Jaipur and Sawaimadhapur depot. On 3.7.96 there was upward price revision in respect of petroleum products and on 23.7.96 the rate of duty was revised in respect of petroleum products. The goods stored at depot were duty paid goods. The duty was paid at the time of clearance of the goods. The revenue was asking for duty on account of price revision as well as revision in rate of duty on the petroleum products which were lying in stock at the relevant date in the above mentioned depot.

2. The appellants are not contesting the demand raised in respect of Sawaimadhapur depot.

3. In respect of the other two depots i.e. Hanumangarh and Jaipur depot, the contention of the appellant is that the demand is confirmed on the basis of circular dt.8.6.01 issued by their Head Office whereby certain quantities of petroleum products were mentioned as balance at these depots. The contention is that the

depots raised certain objections in reply to the circular on the ground that certain quantity of petroleum products were imported and the figures mentioned in the circular were not correct figures as per the actual stock position. The contention is that the appellant produced transfer invoice where it was specifically mentioned as Custom cargo. The contention is that the adjudicating authority in the impugned order ignored the evidence produced by the appellants in respect of the actual stock position of petroleum product which was received regarding which they were liable to pay duty on account of revision in price as well as in respect of rate of duty. The appellant also produced the record of their product showing the actual stock on the relevant dates i.e. 3.7.96 and 23.7.96 and this was also not taken into consideration while confirming the demand.

4. The contention of the revenue is that as appellants were claiming that stocks were less as mentioned in the circular dt.8.6.01 issued by their Head Office on the basis of which duty is demanded therefore, onus to the appellant to prove the fact regarding the actual stock position on the relevant date. Therefore, the demand is rightly made.

5. In this case the revenue was asking for duty on the stocks which were in the depot on 3.7.96 when price was revised in respect of petroleum product and on 23.7.96 when rate of duty was revised in view of the circular dt.8.6.01 issued by head office of the appellant showing the stock position. The contention of the appellant is that the part of the stock is in respect of imported petroleum products.

Regarding this the evidence was produced by them showing the transport allowance whereby it was specifically mentioned that customs cargo. The contention of the appellant is also that the duty can be only demanded in respect of actual stock which is lying on relevant days. The appellant produced evidence in support of this claim by way of gauge register and also submitted that part of stock was imported on payment of custom duty. The appellant also contended that on revision of rate of duty, they were clearing the petroleum products from their depot by charging the duty at the rate on which it has already been cleared from the refineries and they had not collected the over and above any amount. In these circumstances, we find it is a fit case for reconsideration by the adjudicating

authority as the evidence now produced was not before the adjudicating authority. The impugned order is set aside whereby demand was confirmed at Hanumangarh and Jaipur depot. The matter is remanded to the adjudicating authority after affording an opportunity for hearing to the appellant. The appeal is allowed by way of remand.

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