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Commissioner of Customs Vs. Magnet and Electronics (India)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-27-2005

Judge : S Kang, Vice

Appellant : Commissioner of Customs

Respondent : Magnet and Electronics (India)

Judgement :

1. Revenue filed this Appeal against the order-in-appeal passed by the Commissioner (Appeals) whereby the refund claim of the respondent was allowed after relying upon the decision of the Tribunal in the case of Metro Tyres .

2. The contention of the revenue is that mere on the ground that invoice price remains same when the higher duty has been paid, is not to be taken conclusive proof that the appellant had not passed on the burden of duty. Revenue relied upon the decision of the Hon'ble Supreme Court in the case of CCE Mumbai v. Allied photographics India Ltd. .

3. The contention of the respondent is that in fact the price when the appellant had paid duty at a higher rate is less than the price prior to the period. The respondent submitted that as per Chartered Accountant Certificate produced by the appellant before the lower authorities also .shows that the appellant had not collected the excise duty paid by them for their customers.

4. in this case the appellants are a trader and made import of Ferrite Magnets and paid the duty as per the assessment made by the Customs authorities and filed a refund claim in respect of the excise duty which was paid by them. The adjudicating authority sanctioned the refund but ordered to be credited to the Consumer Welfare Fund. On appeal filed by the respondent, the Commissioner Appeals) allowed the refund taking into consideration the fact that the invoice price of the goods imported by the appellant. Commissioner (Appeals) relied upon the decision of the Tribunal, in the case of Metro Typres (supra)CCE v. Allied Photographics India Ltd. (supra), rejected the contention raised by the assessee that there was uniformity price before and after payment of duty. In those circumstances, the findings in the impugned order are not sustainable and set aside The matter is remanded to the Commissioner (Appeals) to decide afresh after affording an opportunity of hearing to the respondent and in view of the observations made by the Hon'ble Supreme Court. The appeal is disposed of by way of remand.

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