

Dutron Plastics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-16-2005

Judge : A Wadhwa

Appellant : Dutron Plastics

Respondent : Commissioner of Central Excise

Judgement :

1. All the four appeals are being disposed of by this common order inasmuch as common issue is involved. The refund claim of the appellant arising out of the year ending turn over discount has been rejected by the authorities below on the ground of unjust enrichment by observing that where credit notes are issued to the customers, subsequent to clearance of the goods, the same are not sufficient to hold that the burden of duty has not been passed on to the customers at the time of clearance of the goods.

2. After hearing both sides, I find that the issue stands decided by the Larger Bench of this Tribunal reported in S. Kumar Ltd v. CCE as also in the case of Grasim Industries (Chemical Division) Ltd v. CCE, Bhopal . The appellants at the time of hearing, as also in the written submissions, have submitted that the aforesaid decisions of the Larger Bench solely relied upon the Tribunal's decision in the case of Sangam Processors (Bhilwara) Ltd on the ground that the civil appeals filed against them were dismissed by the Hon'ble Supreme Court. The appellants have contended that dismissal of civil appeal by the Hon'ble Supreme Court in limine cannot be deemed to have the effect of upholding the order of the

Tribunal and as such binding precedent. Having regard to the Supreme Court's decision in the case of CCE, Ahmedabad v. Ramesh Food Products 2005 (66) RLT 4 (SC) in support of their arguments that dismissal of appeal at preliminary stage of hearing by the Hon'ble Supreme Court cannot be held to be affirmation of view of the Tribunal.

As such, the appellants have contended that the law declared by the Larger Bench is not correct. They have also contended that the Tribunal's decision in the case of Addison & Co v. CCE, Madras 1997 (20) ELT 479 (T) holding that once duty burden is passed on, issue of subsequent credit notes is immaterial, was reversed by the Hon'ble Madras High Court as while answering 3. However, I find that the Larger Bench, while deciding the issue in the case of S. Kumar Ltd, has taken note of the fact that the Tribunal's decision in the case of Addison & Co was reversed by the Hon'ble Madras High Court. However, by taking note of the fact that the appeal against the decision of the Tribunal in the case of Sangam Processors (Bhilwara) Ltd was not admitted by the Hon'ble Supreme Court and by taking note of the other decisions and holding that such dismissal is of binding character, the Larger Bench held against the assessee. I find no reasons to take a different view on the same grounds. It is also seen that the Larger Bench in S. Kumars Ltd and Grasim Industries Ltd were followed by the Tribunal in the case of Hindustan Processors Ltd vide Order No 794/04/NB (C) dated 25.11.2004.

Appeal against the above order filed by Hindustan Processors Ltd was dismissed by the Hon'ble Supreme Court with the order that - "we see no reason to interfere. The Special Leave Petition is dismissed." As such, following the Larger Bench decision, I am of the view that subsequent issuance of credit note cannot be said to be sufficient for not attracting the provisions of unjust enrichment.

4. The appellant's reference to Order No A08-09/IV/SMC/WZB/06 dated 31.10.2005 in their own case to submit that the Tribunal has held in identical circumstances that unjust enrichment is not applicable, is not correct, inasmuch as on going through the said order, I find in para 2 that the Tribunal has observed "However, the barrier of unjust enrichment rebuttal presumption has to be crossed by the assessee." As such, it is not correct on the part of the assessee to say that

the Tribunal has held that bar of unjust enrichment is not applicable in their own case under similar circumstances. Further, in the present case, the appellant has nowhere pleaded that they are in a position to rebut the presumption of duty burden having been passed on to their customers. Admittedly, the same was passed on at the time of clearance of the goods, and that is how the credit note came to be issued by them subsequently in which case the ratio of the Larger Bench decision would apply.

5. In view of the foregoing, I reject all the appeals and uphold the impugned order.

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