Cce Vs. Rishabh Valveleen Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-06-2005

Judge : M Ravindran

Appellant : Cce

Respondent : Rishabh Valveleen Ltd.

Judgement :

1. The Department has filed both the appeals against the order-in-appeal dated 24.12.2003 wherein the Commissioner (Appeals) had allowed the appeals of the respondents in respect of the refund of the duty.

2. The relevant facts for my consideration are : the respondents had cleared the goods to their customers on payment of duty, but subsequently, it was found by them that there was an excess payment of duty due to excess billing, over and above the agreed price. The appellants raised credit note to the customers after the clearance of the goods and sought the refund claim from the authorities. The authorities issued a show cause notice for rejection of the refund claim on the ground that once an invoice is prepared and the duty liability has been determined, the subsequent credit note should not be material to grant the refund claim. The adjudicating authority rejected the refund claim and on appeal, the Commissioner (Appeals) allowed the appeals of the respondents by granting them consequential relief.

3. Advocate appears for the respondents. Heard the learned DR, who submits that the order-in-appeal of the learned Commissioner (Appeals) is directly against the decision of the Larger Bench of this Tribunal in the case of Grasim Ind. (Chemical Divn.) v. CCE. Bhopal . In view of this, she submits that the appeals have to be allowed.

4. Considered the submissions made by the learned DR and perused the records. I find that the respondents had filed the refund claim on the ground that they had paid the excess duty mistakenly and issued credit note subsequent to the clearance of the goods. It is also not in dispute that the appellants had issued the credit notes, but they had not produced any records before the appellate authority to substantiate their claim to the effect that the amount received by them was equivalent to the amount after adjustment of credit note. Since the Commissioner (Appeals) has only relied upon the appellants' intimation that the ledger accounts were verified by the lower authorities, but has not gone into them of his own, it seems to me that the Commissioner (Appeals) has not considered the whole issue in a right prospective.

The order of the Commissioner (Appeals) was passed on 24.12.2003, while the Larger Bench decision in the case of Grasim Ind. (Chemical Divn.) v. CCE, Bhopal, supra, was delivered on 17.02.2003. Since the Larger Bench decision was delivered much before the order of the Commissioner (Appeals), he should have considered the ratio laid down by the Larger Bench. It is not clear from the order, whether the said decision was cited before the Commissioner (appeals) or not. In absence of any such indication in the order-in-appeal, I am unable to hold that the order-in-appeal is correct. Since the decision of the Larger Bench of this Tribunal in the case of Grasim Ind. (Chemical Divn.) v. CCE, Bhopal, supra, was not cited before the Commissioner (Appeals) either by the respondents or by the Department, I feel that the matter should be remanded back to the Commissioner (Appeals) to consider the ratio of the law laid down by the Larger Bench of this Tribunal and pass an appropriate order accordingly.

6. In view of the above circumstances, the order passed by the Commissioner (Appeals) is set aside and the matter is remanded back to him for reconsidering

the issue in the light of my above observations.

Appeals are allowed by way of remand.