Gail Vs. C.C.E.

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SooperKanoon Citation : sooperkanoon.com/41383

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-04-2006

Judge : S Kang, Vice, N T C.N.B.

Appellant : Gail

Respondent : C.C.E.

Judgement :

1. The appeal is directed against the denial of refund claim of about Rs. 1.3 lakhs, on the ground of unjust enrichment. Commissioner (Appeals) has noted in the order that the duty liability has been passed on by the appellant in the invoice issued at the time of sale to buyer and therefore, the amount is not refundable.

2. Appellant is a Public Sector Undertaking, manufacturing LPG and distributing the same through other Public Sector Undertakings namely, IOC and BPCL. Duty in question is in regard to LPG cleared by the appellant on 22nd and 23rd November 2000. The claim is on the ground that, price of LPG had been reduced by the Govt. w.e.f. 22.11.2000; but the appellant came to know of the reduction only on 24.11.2000. In the meantime, the LPG was cleared after discharging duty at the earlier (higher) price. On the question of passing on, the submission is that invoices were raised at the higher amount (including duty) at the time of removal of the goods to the oil companies, but payment was made by them, in terms of the revised (reduced) price, including in regard to central excise duty. Two certificates issued by the recipients of the LPG have also been produced confirming payment at the reduced rates.

3. We have perused the record and heard both sides. The mere issue of an invoice does not amount to passing on of the duty liability. Passing on takes place only upon payment of duty as shown in the sale document by the recipient of the goods. In the present case, parties are having continuous transaction and payments are settled subsequent to the supply of the goods mentioned in the invoice. Certificates from the buyer companies clearly show that payments were made by the buyers including in regard to central excise duty, at the lower prices only.

Thus, the fact that the higher duty amount was not passed on, remains established. Provision relating to unjust enrichment cannot apply to the appellant's case.

4. In view of this, impugned order is set aside and the appeal is allowed with consequential relief to the appellant.