

**Commissioner of Customs Vs. Sigma Electronics**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Feb-27-2006

**Reported in :** (2006)(109)ECC53

**Judge :** M Ravindran

**Appellant :** Commissioner of Customs

**Respondent :** Sigma Electronics

**Judgement :**

1. This appeal is directed against order-in-appeal dt. 3.2.05 wherein respondent's appeal against rejection of refund claim was allowed by the Commissioner (Appeals).

2. The relevant facts that arise for consideration are that the respondent filed refund claim in respect of seven Bills of Entries and the same were sanctioned and credited to the Consumer Welfare Fund, as the respondent could not produce the evidence of non-passing over of the incidence of duty. The matter was contested and Tribunal in its earlier order dt.25.9.03 remanded the matter back to the adjudicating authority to consider the evidences that may be produced by the respondent. The adjudicating authority second time did not accept the Chartered Accountant's certificate which was produced by the respondent and credited the amount again to the Consumer Welfare Fund. The Commissioner(Appeals) on an appeal allowed the appeal of the appellant and set aside the order-in-original. Hence this appeal by the Revenue.

3. None appeared for the respondent. Ld. DR submits that the order of the Commissioner(Appeals) is not correct in-as-much that he has only relied upon the certificate issued by the Chartered Accountant and has not considered the provisions of law which requires the respondent to produce the invoices and other supplementary documents to prove that the incidence of duty has not been passed on by them. He relies upon the decision in the case of JCT Ltd. v. CCE, Chandigarh and CCE., Nagpur v. Maharashtra Cylinder Ltd. .

4. Considered the submissions made by Ld.DR and perused the records. I find that the Commissioner(Appeals) in his order-in-appeal had categorically and in detailed manner dealt with the evidence which has been produced by the respondent before him. The Commissioner(Appeals) in his order-in-appeal at para 4 has held as follows: From the above certificate, it is revealed that the Chartered Accountant has specifically mentioned that it is also certified that the assessee has not passed the excess duty to the consumer(purchaser), therefore, the first direction of the Tribunal is fulfilled. I also find that the second direction of the Tribunal that they had sold the goods below the cost of price which requires verification at the lower level. To verify the veracity of this fact, the Annexure to the Chartered Accountant's Certificate was examined, it was found that the goods were sold at lower rate than the cost of goods though the duty element was not shown separately.

The Annexure is also duly verified by the Chartered Accountant. The column 12 of the Annexure shows that the appellant had sold the goods below the cost price of the goods shown in column 9. The Chartered Accountant's certificate is specific and reveals that the appellant had not passed on the incidence of duty to their customers. I find force in the appellant's contentions that the certificate has been issued on the basis of ledger and the ledger is prepared on the basis of source documents i.e. purchase bills, receipt of payment, sales bills etc., hence in absence of any contrary evidence by the Department, there is no reason to doubt about the genuineness of the Chartered Accountant's Certificate.

From the above, I find that the Commissioner(Appeals) order setting aside the order-in-original is not only based on the Chartered Accountant's certificate but

also on his appreciation of the evidence which was attached along with the Chartered Accountant's certificate.

The categorical finding of the Commissioner (Appeals), that Col.12 of the Annexure shows the sale of goods below the cost price, this itself is an evident to prove that the respondent has not passed on the incident of duty. This conclusion is on the fact that no prudent businessman would sell the goods at a price lower than the cost of price, unless there is a distress sale. In this case no evidence is brought on record that there was a distress sale.

5. Further the case laws on which Ld. DR relies upon has not considered the Chartered Accountant's Certificate on the ground that it has been stated in those cases that there was no examination of cost data and the relevant documents and hence the order of the Tribunal in both the cases did not accept the Chartered Accountant's certificate. In this case, I find that the Chartered Accountant while giving the certificate has mentioned below: M/s. Sigma Electronics, Jaipur imported goods and sold goods as per annexure attached. The figures shown in annexure is true and correct as per document and information provided to us. Further it is also certified that the assessee has not passed on the excess Customs Duty to the Consumer(purchaser).

6. The said Chartered Accountant's certificate is very clear in-as-much, the Chartered Accountant has verified all the documents and the information and then only come to the conclusion that the respondent has not passed on the incidence of duty to their customers.

Hence the ratio as laid down by the two decisions of the Tribunal may not be applicable in this case.

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