Commissioner of Central Excise Vs. Gimpex Rubbers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-01-2006

Reported in : (2006)(105)ECC131

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Gimpex Rubbers

Judgement :

1. This appeal is directed against the Order in appeal dated 28-10-2005 wherein the Commissioner (Appeals) which set aside the order in original wherein the refund claim of the respondents was rejected.

2. Considered the submissions made by both sides. The issue involved in this case is refund claim by the respondents on the service tax paid by them on the services provided by the goods transport operators on 21-7-2003 for the period 16-11-97 to 1-6-98. The respondents paid the amount on pursuation department and later claimed refund. I find that the refund claim was rejected by the adjudicating authority only on the ground that the respondents have passed on the incidence of service tax to the customers. I find that the respondents have before the adjudicating authority produced the document indicating that they have not passed on the incidence of service tax to the customers. The Commissioner (Appeals) has perused the evidence produced by the respondents before him and he allowed the appeal of the respondent. I find from the order in appeal, the

Commissioner (Appeals) has observed as follows: It is observed that they had submitted the copies of sale invoices, Chartered Accountant's certificate and affidavit to establish the fact that the incidence of service tax has not been passed on to the customers and no rebuttal to the contrary has been given by the department. In Mohan Sales (India) v. CCE, Kolkata , it has been held that proof against unjust enrichment is accepted if local sale invoices and chartered accountant's certificate is produced for which no rebuttal is given by the department.

In other words, it does not mention that in case there is uniformity in prices before and after assessment refund cannot be granted to the party rather it only mentions that we have to further examine the matter to find out whether the incidence of duty passed on to any other person. As already observed though there is uniformity of price in this case both before and after, (as per samples invoices shown to me) I am not making this as the only basis for recommending grant of refund to the appellant. In view of the aforesaid Tribunal judgment namely Mohan Sales (India) v. CCE, Kolkata on additional points like party providing CA certificate dated 6-12-2003 which is not rebutted by the department.

I recommend the refund to the appellant.

3. To my mind, the order in appeal deals with issue, which is squarely covered by the direction of the Hon'ble Supreme Court, in case of refund. The Revenue is not able to produce any contrary evidence against the evidence produced by the respondents. In view of the above, I do not find any merit in the appeal of the department and the same is dismissed.