

Rajasthan Electronics and Vs. C.C.E.

Rajasthan Electronics and Vs. C.C.E.

SooperKanoon Citation : sooperkanoon.com/42090

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-2006

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

Appellant : Rajasthan Electronics and

Respondent : C.C.E.

Judgement :

1. Appellant is a manufacturer of static energy meters. On 11.2.02 it filed a refund application in regard to excess duty (excise) paid. The ground taken was that meters in question had been sold to Rajasthan State Electricity Board and upon finalisation of the price, the electricity board paid the appellant at a lower price than the originally invoiced price, at the time of supply. It was submitted that central excise duty payment by the electricity board was also at the amount worked out on the revised sale price and not at the original price. That claim was rejected under the impugned order on the ground that refund would lead to unjust enrichment. The impugned order has relied on the decision of Larger Bench of this Tribunal in the case of Grasim Industries v. C.C.E., Bhopal 2. The submission of the learned Counsel for the appellant is that decision in the case of Grasim Industries is not applicable to the present case at all, inasmuch as, the price was provisional at the time of removal of the meters and the appellant was never paid either price or duty in terms of the original invoice price. Both the payments were made at the revised lower prices. It is being contended that in a case like that, question of unjust enrichment does not arise at all.

3. Learned DR would submit that goods were required to be assessed at the price at the time of its removal and subsequent price revision has no relevance to assessment. He also contends that if the sale price was provisional, the proper thing to do for the assessee was to seek provisional assessment. He also pointed out that though price is stated to be the subsequently approved at a lower rate the payment was at a lesser rate than the purported revised price also.

4. There is merit in the appellant's case. Unjust enrichment arises only when an amount of duty originally paid by an assessee to government and passed on the buyer of the goods is refunded to the assessee. In the present case, even though the assessee paid duty based on the invoiced higher price at the time of removal of the goods from the factory, the buyer (Electricity Board) approved the price only at a lower rate. Duty was reimbursed also only at the lower price. The price approval was also in terms of the tender prevalent at the time of removal of goods. Thus, in the present case, no passing on of the higher duty amount ever took place.

5. The refund has arisen because of the following price variation clause in the contract between, the parties.

(i) In case delivery schedule is already over, pending supplies against previous order are accepted at such lower rates, if any, as are received in subsequent tender as against charging liquidated damages on old rates, if it is so economical and the tendered agrees to it, if they are not agreeable, supply shall not be taken and order for balance supply shall be cancelled as per provision of the purchase order.

(ii) (a) When delivery schedule is not covered if any, previous successful tenderer has also participated in a new tender enquiry, and accented the lower rate as received in the subsequent tender, then pending supply against previous order shall be taken at the lower rate as received in the subsequent tender.

(b) If the supplier has not participated or participated but he is not agreeable to supply the balance quantity at lower rate received in the subsequent tender, the balance supply against previous order shall not be taken and order in respect

thereof shall be cancelled without any financial liability on either side.

It is clear from the above that supplies can continue on a regular basis even after the validity period of a price agreement and the mechanism provided is that continued supply over and above the finalized contract will be at the price subsequently approved. In the present case, refund claim has arisen because the appellant originally paid duty at the price of Rs. 743.11 (contract prevalent at the time of removal when supply was made) but price was approved at a reduced price of Rs. 672.94. To a case like this, the decision of the Tribunal in the case of *Grasim Industries* has no application. Instead, the appellant's claim remains covered by the decision of this Tribunal in the case of *Universal Cylinders Ltd.* 2004 (178) ELT 898. In that case also, the price at the time of removal of the goods from the factory was provisional between the parties in view of price variation clause.

Subsequently, when the price was finalized, it was at a certain lower amount. The tribunal held that a refund claim in such a case such is acceptable in terms of Section 11B.6. It is also not necessary that in all cases of price uncertainty, provisional assessment should be resorted to. Assessee can also resort to refund claim. Nor does provisional assessment help. The bar of unjust enrichment covers provisional assessment also. The only relevant question is whether the refund claim is in relation to a tax payment which remains passed on. Whether the original assessment was provisional or final is wholly irrelevant as excess payment of duty can take place under both types of assessments. In the present case, there is no dispute that the excess payment of duty was not passed on to the buyer.

7. In the result, the appeal is allowed after setting aside the impugned order. Revenue shall refund the excess paid duty to the assessee appellant at the earliest.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com