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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-10-2006

Reported in : (2006)(109)ECC577

Judge : J Balasundaram, Vice-, S T Chittaranjan

Appellant : Pride Foramer

Respondent : Cc (import)

Judgement :

1. Heard both sides. Under the impugned orders passed by the original authority and the lower appellate authority, refund claim of the appellants for an amount of Rs. 10 crores has been rejected leading to the present appeal before the Tribunal.
2. Both sides agree that the dispute relating to valuation of the impugned Rig imported by the appellants has since been settled in favour of the appellants by the order of the Hon'ble Supreme Court dated 14.2.2005. The appellants had earlier made a deposit of Rs. 10 crores through a pay order and had given a bond for Rs. 50 crores for taking release of the impugned Rig while the dispute regarding valuation of the same was pending adjudication by the Commissioner of Customs. The bond for Rs. 50 crores has since been cancelled and the grievance of the appellants is restricted to non-refund of the deposit of Rs. 10 crores.
3. We find from the impugned order that the original authority has sanctioned the refund claim but she has credited the amount to the Consumer Welfare Fund

under Section 27(2) of the Customs Act, 1952 holding that the appellants have not been able to prove that the duty burden has not been passed on to their customers. The lower appellate authority has also held that the burden of proof in this regard lies on the appellants and that since they have not satisfactorily discharged the same, he has upheld the order of the original authority crediting the refund amount to the Consumer Welfare Fund on the ground of unjust enrichment.

4. We first take up the question as to whether the amount deposited can be treated as duty and whether the refund of the same is subject to the doctrine of unjust enrichment.

5. Shri Vimlesh Kumar, learned SDR cites the decision of the Hon'ble High Court of Gujarat in the case of Parle International Ltd. v. UOI , which holds that the amount deposited during adjudication proceedings is to be regarded as "deposit" and not as duty and hence doctrine of unjust enrichment is not applicable to refund of such deposit. However, as pointed out by the learned SDR, this decision of the Hon'ble High Court of Gujarat was held to be wrong and set aside by the Hon'ble Supreme Court vide Commissioner v. Parle International Ltd. 2005 (188) ELT A81 (SC) in the light of the following earlier decisions of the Hon'ble Supreme Court: (i) CCE, Mumbai-II v. Allied Photographies India Ltd. Sahakari Khand Udyog Mandal Ltd. v. CCE 6. The learned SDR has also brought to our notice the decision of the Hon'ble Supreme Court in the case of UOI v. Jain Spinners Ltd. , in which it has been held that the refund of disputed amount deposited as per Court's order are to be treated as deposit of duty and subjected to doctrine of unjust enrichment. He also states that in the present case, the deposit was made pursuant to an order dated 31.10.2001 from the Hon'ble Bombay High Court.

7. We find that in the case of Sahakari Khand Udyog (cited supra), the Hon'ble Supreme Court has held that doctrine of unjust enrichment is based on equity, and hence irrespective of applicability of any specific legal provision, the said doctrine can be invoked to deny benefit to which a person is not entitled. It has also been held therein that a person cannot claim or retain any undue benefit even in the absence of any statutory provision unless before claiming a relief of refund, an appellant shows that he has paid the amount for which the relief is sought and that

he has not passed on the burden to consumers and if such relief is not granted, he would suffer loss.

8. In the light of aforecited decisions of the Hon'ble Supreme Court, we are of the view that the lower authorities cannot be faulted in this case for invoking the doctrine of unjust enrichment while considering the claim for refund of the impugned security deposit.

9. Now, we take up the next question as to whether the appellants have discharged the burden cost on them to prove that they have not passed on the duty burden. We find that the appellants have supplied the impugned Rig to M/s ONGC and they have not obtained any letter or proof from M/s ONGC to the effect that the deposit made by the appellants at the time of taking release of the impugned Rig has not been passed on to M/s ONGC. We also find that the documentary evidence such as copy of the Balance Sheet showing that the amount paid towards security deposit has not been passed on but borne by the appellants, was not filed by the appellants before the lower authorities. As such, in our view, in the absence of the documentary evidence proving that the appellants have not passed on the burden of the deposit amount to M/s ONGC, the lower authorities had no option but to credit the sanctioned refund to the Consumer Welfare Fund.

10. Shri D.B. Shroff, learned Advocate for the appellants states that subsequent to the order dated 21.11.2005 passed by the lower appellate authority, they have approached M/s ONGC on 18.01.2006 for a certificate that the impugned amount has not been passed on by the appellants to M/s ONGC and the appellants have not received any reply from M/s ONGC so far. However, Shri Shroff makes a statement before us that the amount involved towards the impugned deposit has been entirely borne by the appellants and the same has not been passed on to M/s ONGC. In support, he also relies on a certificate dated 14.6.2005 from the statutory Indian auditors of the appellant company certifying that the impugned amount of Rs. 10 crores was not passed on to M/s ONGC. He also relies on a certificate dated 13.6.2005 given by the statutory French auditors of the appellant company certifying that an amount of Rs. 10 crores in question has not been

received from any source (M/s ONGC or otherwise) and that the said amount is outstanding from the Govt. of India. Shri Shroff has also shown us the latest Balance Sheet of the appellant company showing an amount of Rs. 10 crores as customs duty recoverable. CC, New Delhi v. Maruti Udyog Ltd. , it was held by the Tribunal that the Balance Sheet showing refund as amount recoverable from customs and certificate of Chartered Accountant produced to same effect can be taken as evidence that the burden of incidence of duty has not been passed on.

12. In the light of the Balance Sheets, Chartered Accountants' certificates and the statement made by the learned Advocate Shri D.B.Shroff that no reimbursement of Rs. 10 crores from M/s ONGC has been received, we are of the view that the appellants have succeeded before us in establishing that the burden of the impugned amount has not been passed on by the appellants. We also find that no useful purpose would be served by remanding the matter to the lower authorities for consideration of these evidences including the Balance Sheet etc., which was not produced earlier before the lower authorities. Being satisfied that the appellants have not passed on the burden of the impugned amount of Rs. 10 crores and that they would suffer a loss if refund of the same is not granted, we set aside the impugned orders passed by the lower authorities and direct the original authority to withdraw the amount from the Consumer Welfare Fund and refund the same to the appellants.

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