

Prima Pick N. Pack Limited Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-2006

Judge : S Kang, Vice

Appellant : Prima Pick N. Pack Limited

Respondent : Cce

Judgement :

2. The appellants filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals) whereby the refund claim of the appellant was rejected on the ground that the goods were cleared as per the approved price list. Therefore, the refund is not maintainable.

3. The contention of the appellants is that they are engaged in the manufacture of HDPE bags and were supplying to Food Corporation of India (FCI). The appellants filed price list in Part-II, which was approved by the proper officer w.e.f. 30.11.90. Subsequent to this approval, the FCI revised the prices of the bags downward and the appellants filed revised price list dated 25.3.91 giving effect from 30.11.90. The same was also approved by the Revenue. During the month of December, 1990, the appellants cleared HDPE bags to the FCI raising the invoice at the rate prevalent at that time. However, the FCI after revision of the rates, made payment at the revised rates. The contention is that as the appellants cleared the goods at the lower rates, therefore, they are entitled for the refund.

4. The contention of the Revenue is that the goods were cleared in the month of December as per the approved price list. Therefore, the refund is not refundable. It is also pointed out by the Revenue that all the refund claims are subject to the principles of unjust enrichment. The Revenue relied upon the decision of the Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. v. CCE

5. In this case, the appellants cleared the goods at the higher rate to the FCI. However, the rates were revised downward. The appellants filed the revised price list covering the period under which the said goods were covered that price list was also good. Therefore, it has to be seen at what price, the appellants actually cleared the goods and the refund is also subject to the doctrine of unjust enrichment as held by the Hon'ble Supreme Court in the case relied upon by the Revenue. The Hon'ble Supreme Court had held that doctrine of unjust enrichment based on equity, thus, irrespective of applicability of Section 11B of the Central Excise Act, doctrine can be invoked to deny benefit to which a person is not otherwise entitled. Before claiming a relief of refund, assessee to show that he has paid amount for which relief is sought, he has not passed on burden on consumers and if such relief not granted, he should suffer loss.

6. In view of the above, the impugned order is set aside and the matter is remanded to the adjudicating authority to decide it afresh after affording an opportunity of hearing to the appellants. The appeal is allowed by way of remand.

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