Apar Industries Ltd. Vs. Ccex

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-27-2006

Reported in : (2006)(111)ECC109

Judge : J Balasundaram, Vice-, S T Chittaranjan

Appellant : Apar Industries Ltd.

Respondent : Ccex

Judgement :
1. Heard both sides. The appellants cleared the impugned goods from their factory to a depot during the period Aug, 1996 to Oct, 1996 and paid duty as per the price declared by them for the ex-factory sale.

Subsequently, the appellants have sold the impugned goods from the depot at a lower price. It is the contention of the appellants that since at the material time the depot was the place of removal under the law, they are entitled to the assessment at lower value and consequently, they are entitled for refund. The refund claim filed by the appellants has been rejected by the original authority and such rejection has been upheld by the lower appellate authority leading to these two appeals involving similar questions.

2. We find that the lower appellate authority has held that sale from the depot can be considered as sale from the place of removal. He has also noted that under Section 4(4)(ba), the time of removal has been defined to be the time at which the

goods are cleared from the factory.

Accordingly, he has held that the price prevailing at the time of removal is to be adopted and not the price at which the goods have been sold subsequently.

3. In view of the fact that the time of removal has been defined under the law to be 'when clearances are made from the factory', the finding of the lower appellate authority, in our opinion, cannot be faulted.

Moreover, we find that the appellants have not filed any appeal against the order of assessment but have merely filed a refund claim, which also cannot be allowed without the order of assessment being reversed in appeal as held in the Apex Court's decisions in the case of CCE, Kanpur v. Flock (India) Pvt. Ltd. and Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive) .