C.C.E. Vs. K.P. Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-07-2006

Reported in : (2006)(113)ECC519

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

Appellant : C.C.E.

Respondent : K.P. Enterprises

Judgement :

2. Revenue filed this appeal against the order in appeal passed by the Commissioner (Appeals), whereby the refund claim of the respondents was allowed.

3. Brief facts of the case are that respondents are engaged in the manufacture of Pan Masala containing Tobacco i.e. Gutkha and during the period December 2000 to February 2001 the respondents cleared goods on payment of basic excise duty and additional duty of excise. Thereafter, on 12.8.2002 the appellant filed a refund claim in respect of additional duty of excise on the ground that goods manufactured by them are not liable to pay additional duty of excise. The adjudicating authority rejected the refund claim. On appeal filed by the present respondent Commissioner (Appeals) allowed the refund claim.

4. The contention of the Revenue is that the principles of unjust enrichment are applicable in respect of all refund claims. Revenue relied upon the decision of the

Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise and CustomsTrimurti Fragrance Pvt. Ltd. v.C.C.E., Kanpur Final Order No. 266/05-NB-dated-11.3.2005 whereby the Revenue's appeal was allowed in similar situation.

5. The only contention of the respondents is that a principle of unjust enrichment is not applicable in the case as the duty has been paid due to mistake.

6. We find that Commissioner (Appeals) has allowed the refund claim by saying that principles of unjust enrichment is not applicable as the amount of Trade tax is paid in much than the refund of additional duty of excise paid by the respondents. We find that the trade tax is not payable or paid under the Central Excise Act. The respondents are asking for refund of the additional duty of excise which has already collected from customs. In the case of Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Custom (Supra) held that Doctrine of 'unjust enrichment' is based on equity, and has been accepted and applied in several cases and the same is applicable even in absence of statutory provisions. Before claiming a relief of refund, it is necessary for the Petitioner to show that he has paid the amount for which the relief is sought, he had not passed the burden on the consumer and if such relief is not granted, he would suffer losses. In the present case the adjudicating authority is specifically held that the additional duty of excise paid by the present respondents has been collected from their buyer. This factual position is not disputed by the respondent. The Tribunal in the case of C.C.E., Kanpur v. Trimurty Fragrance Pvt. Ltd. (Supra) held that the refund claim is hit by the principles of unjust enrichment. The respondent passed on the incident of duties to their buyers. In view of the decision of the Hon'ble Supreme Court and in view of the Tribunal's decision, the impugned order is set aside and the appeal is allowed.