

Cce Vs. Bombay Snuff Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-2006

Reported in : (2007)(211)ELT423TriDel

Judge : P Das

Appellant : Cce

Respondent : Bombay Snuff Co. Ltd.

Judgement :

1. The instant appeals were filed by the Revenue against the impugned order wherein the Commissioner (Appeals) upheld the adjudication order sanctioning refunds and the appeals filed by the Department were rejected.

2. In this case, the respondents are engaged in the manufacture of snuff. They filed four refund claims on the ground that the Government of Maharashtra imposed Luxury Tax; the Luxury Tax is admissible deduction under Section 4 of the Central Excise Act, 1944; and the Luxury Tax was paid by the respondents subsequent to the clearance of goods as the State Government did not consider their representation.

They have also paid the duty on the amount of Luxury Tax. The respondents did not recover the Luxury Tax from their customers. Hence, the respondents filed the refund claims of the duty paid on Luxury Tax as admissible deduction under Section 4 of the Central Excise Act, 1944. The adjudicating authority sanctioned

the refund claims and allowed the credit of the said in its CENVAT account following the Tribunal's decision in the case of CCE, Kanpur v. Kothari Products Ltd. , which was upheld by the Commissioner (Appeals).

3. The learned DR submits that as per Section 11-B of the Central Excise Act, it is clear that the assessee would be entitled for the grant of refund only if he is able to show that he is not passing on the duty, burden to any other person, which is claimed as refund. In this connection, the learned DR drew the attention of the Bench on the ground No. 6 of the Revenue's appeals as under: 6. Further, from the Price list with effect from 01.05.2001 circulated by the Assessee to their customers, it is observed that the condition No. 19 states as Any duty and/or any increase in any duty and/or Tax by the Union or State Government to which we may become liable after the acceptance of an order but before it is delivered by us in part or in full will be payable by the customers concerned.

From above it is very clear that the Assessee is authorized to recover the amount of Luxury Tax from their customers. As such the price of the referred goods is not the final price as it is subjected to change in view of conditions of Business printed in the price lists issued by the Assessee for sale of their goods to their customers and variations in levies. As such in the instant case, the price adopted by the Assessee is subject to revision of duty rate and such enhanced rate is to be borne by the customer by way of further enhancing the price agreed upon, by the element of enhanced duty amount and such enhanced rate is not to be borne by the Assessee. As such the Assessee is not entitled for the aforesaid refund claimed.

4. The learned Advocate on behalf of the respondents submits that, in these cases duty was paid by making debit entries in PLA subsequent to date of clearance of goods and presumption of unjust enrichment under Section 12-B of the Central Excise Act, 1944 is not attracted. In this connection, he relied upon the following case laws:CCE. Kanpur-I v. Kothari Products The learned Advocate further submits that the adjudicating authority rightly sanctioned the refund claims as the Range Officer had examined the refund claims, which was recorded in the adjudication order, that "The party could not recover the amount of Luxury Tax

from the customers...." It was observed by the Commissioner (Appeals) that the refund claims were sent to the Range Superintendent of the respondents for verification purposes and since no anomaly as regards the quantum of the refund was observed, the contention raised in the Department's appeals, at this stage, is not maintainable.

5. After considering the submissions of both sides and on perusal of the record, I find force in the submission of the learned DR. The principle of unjust enrichment varies depending upon case to case. In the present case, I find from the appeals of the Revenue that a price list was circulated by the respondents to their customers for collection of any duty and/or any increase in any duty and/or tax after acceptance of the order, but before it is delivered by the respondents.

Thus, it appears that the respondents are authorized to recover the amount of tax from their customers. This was not examined by the appellate authorities and, therefore, the cases cited by the learned advocate are not applicable in this case. I find that the price lists for recovery of the amount of duty from the customers after acceptance of the order need to be examined and accordingly, the impugned order is set aside and remand the matter back to the adjudicating authority to examine the refund claims in the light of the aforesaid observations.

(Operative part of this order was pronounced in the open court on 19.12.06)

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