Philips Electronics India Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-08-2007

Reported in : (2007)(117)ECC147

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Philips Electronics India Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The above appeal arises out of the Order of the Commissioner of Central Excise (A) who has upheld the order of the Asstt. Commissioner by which refund claim amounting to Rs. 18,42,29,613/- was sanctioned and directed to be credited to the Consumer Welfare Fund established under Section 12C of the Central Excise Act, 1944 on the ground that the assessees failed to show that they had not passed on the duty burden of their product to their buyers.

2. The brief facts are that the appellants herein are engaged interalia in the manufacture of Consumer Electronic Products like Radio sets and also purchase similar goods from other manufacturers viz. A.S.Electronics (ASE) and Poonitronics (India) Pvt. Ltd. (PIPL). They claimed the benefit of concessional rate of duty in terms of Sr.No.10(a) of Notification 57/93-CE dated 28.2.93 with effect from 1.3.93 far products falling under Heading 85.27;- the benefit was rejected by the Asstt.Commissioner of C.E (A) vide orders dated 30.4.93, 20.8.93 and 26.8.93;- appeals filed by them were rejected by the Commissioner (A) vide order

dated 31.12.1993;- their challenge to the denial of the exemption was successful before the Tribunal CEGAT, New Delhi which vide its Final Order No. E/438 to 440/95-B1 dated 9.11.1995, extended the benefit of Concessional rate of duty of 10% ad-valorem as per Notification. The Supreme Court dismissed the appeal filed by the Revenue.

3. Six claims for Refund of a total amount of Rs. 20,08,64,189/- were filed by the Appellants. Claims for Refund of Rs. 1,25,95,393/-, Rs. 21,98,104/- and Rs. 18,41,079/- for the periods 01.03.93 to 12.5.93, 28.2.93 to 31.8.93 and 28.2.93 to 25.8.93 respectively were sanctioned and directed to be paid to the Appellants on the ground that this amount was not subsequently passed on to the buyers. The remaining claims for refund amounting to Rs. 81,42,29,613/- were held to be hit by the bar of unjust enrichment by both the adjudicating authority and the lower appellate authority, who also rejected the claim for payment of interest on sanctioned refund amount; hence this appeal.

3. We have heard both sides. The contention of the assessees that the fact that the price of the product remained the same all along is sufficient to establish that they had borne the duty burden and had not passed it on to their customers, cannot be accepted, for the reason that the price remaining constant is not sufficient to prove that the incidence of duty has not been passed on to Buyers in the light of the Tribunal's Orders inJyoti Structures Ltd. v. Commissioner of Cus & C.Ex. AurangabadCommissioner of C.Ex. Ahmedabad v. Gopi Synthetics Ltd. .(P) Ltd. v. CCE, Ghaziabad 4. Further, in the case of N.C.L. Industries v. Commissioner of C.Ex.

Hyderabad 2004 (177) ELT 1015 the Tribunal has held that the Fact that cum-duty price of the product remains the same before and after reduction of duty thereon shows that the entire duty burden had been passed on to the Consumers. In the case of Commissioner of C.Ex. Mumbai v. Allied Photographics India Ltd. the Apex Court has held that uniformity in price before and after assessment, does not lead to inevitable conclusion that incidence of duty has not been passed on to buyer as such uniformity may be due to several factors.

The court has held that costing of goods in the hands of the Distributors, the cost element & treatment etc. were relevant circumstances to decide this issue.

5. The Chartered Accountants Certificate relied upon by the assessees, is not conclusive of the issue as the Certificate does not provide details about passing on of duties nor does it show that the sale price was included in the amount claimed as refund. No documents relating to placing of order and terms of supply or relevant sales bills have been brought on record to establish that the duty burden was not passed on to any other person, which evidence was required to be produced by the assessees in the light of the Tribunal's orders in the cases of Commissioner of Customs, Mumbai v. Eltech Enterprises , Memirex & Co. v. Commissioner of Central Excise, Allahabad 2004 (174) ELT 216 and HCL Office Automation Ltd. v. CCE, Meerut 6. Reliance placed by the assessee on Tribunal's decision in the case of Transformers & Electricals Kerala Ltd. v. Commr. of Cus. Cochin is misplaced for the reason that, in that case, the C.A. Certificate clearly stated that the cost of the Transformer had already been pre-determined in the contract and the duty element has been borne by the assessees and the cost analysis clearly indicated that the cost of Transformer did not include this duty element, while in the present case, no costing data of the product is available.

7. In the light of the above discussion we hold that the assessees have not discharged the burden cast upon them to prove that the duty burden on the product has not been passed on to their buyers. The appellants pray that another opportunity be extended to them to produce further evidence on this aspect. We accept the prayer and remand the issue as to whether the duty burden on the product has been passed on to the assessees' buyers or not, to the adjudicating authority for fresh decision after extending a reasonable opportunity to the appellants of being heard in their defence and producing such evidence as they deem necessary to substantiate their case.

8. As regards the claim for interest on delayed refund, we see merit in the assessees contention that they are eligible to interest after the expiry of 3 months from the filing of their claims for refund viz.

April, 1996 in the light of the statutory provisions. Interest is payable from July, 1996 on the amounts of Rs. 17,45,42,335/- Rs. 23,88,558/- and Rs. 72,98,720/-.