

Commissioner of Customs Vs. Palus Engineering Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-08-2007

Reported in : (2007)(116)ECC541

Judge : T Anjaneyulu

Appellant : Commissioner of Customs

Respondent : Palus Engineering Industries

Judgement :

1. Heard both sides. The revenue is in appeal. None appeared for the respondents. The assessee engaged in manufacturing of engineering goods and utilized the services of goods transport operators and have paid service tax of Rs. 29,441/- for the period 16.11.97 to 1.6.98.

Thereafter having filed refund claim on the ground that they are SSI unit and as per notification No. 43/97-CE dated 5.11.97, they are not required to pay service tax. The adjudicating authority sanctioned their refund claim but credited the amount to the consumer welfare fund under Section 12C of Central Excise Act, 1944. Therefore, the assessee preferred an appeal before the Commissioner (Appeals), Central Excise, Pune, who in turn has allowed the refund claim in cash. Therefore, the revenue is aggrieved and filed the present appeal.

2. The Commissioner (Appeals) while applying the ration laid down in the case of Punjab Beverages (P) Ltd. v. CCE held that the doctrine of unjust enrichment is

not applicable to the present case since they did not issue any debit note to recover the service tax from his customers and so also the invoices. However, the assessee shown the amount as expenditure in the P&L A/c for the year ending 31.3.03. The Id. DR contends that the assessee has not issued any invoices to show the amount in the P&L A/c and this would go as cost of goods and from next year onwards the assessee would collect indirectly the service tax paid by him, as such, unjust enrichment is very much applicable.

3. Having considered the contentions of both sides, it is felt necessary to verify whether the amount paid by the assessee and shown as an expenditure for the year ending 31.3.03, has gone into cost of production during the next year. Therefore, the Commissioner (Appeals) shall examine this aspect and decide the case afresh. Accordingly the matter is remanded back to him. The present appeal is allowed in the above terms.

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