SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Avichal Textiles (P) Ltd. Vs. Cce

Avichal Textiles (P) Ltd. Vs. Cce

SooperKanoon Citation : sooperkanoon.com/44595

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-15-2007

Reported in : (2007)(117)ECC302

Judge : P Das

Appellant : Avichal Textiles (P) Ltd.

Respondent : Cce

Judgement :

1. The appellant filed the appeals against the rejection of refund claim. The adjudicating authority sanctioned the refund claims but the same were debited to the Consumer Welfare Account. The ld. Advocate for the appellant submits that in this case the appellant submitted certificate of profit and loss account from which it will be established that the duty amount has not been recovered from any other persons. He drew the attention of the Bench of CA's certificate and relevant portion of the balance sheet. He submits that Commissioner (Appeals) rejected these evidences. The ld. Advocate submits that the Hon'ble Gujarat High Court and the Tribunal in a series of judgment consistently viewed that certificate of CA and balance sheet showing amount of refund claim as excise duty cannot be hit by unjust enrichment. In this connection, he relied upon the following decisions:Mangal Textile Mills Pvt. Ltd. and Anr. v. Union of India 2002 (49) RLT 265 (Guj.)Commissioner of Customs, Air Cargo Unit, New Delhi v. Maruti Udyog Ltd.Beekay Hosiery Industries v. Commissioner of Customs, New DelhiBrindavan Tex Processors Pvt. Ltd. v. Commissioner of Central Excise Bangalore 4. The ld.

DR on behalf of the respondent reiterated the findings of the Commissioner (Appeals). He submits in the case of Rajasthan Spg.

and Wvg. Mills Ltd. v. Commissioner of central Excise, Jaipur-II 2006 (194) ELT 254 (Tri.-Del.) it has been held that any amount paid by the appellant or any company, is in the form of expenses, and is generally accounted as an expense in their profit and loss account. He submits that in this case the profit and loss account does not indicate the refund amount as in the form of expenses and therefore, the Commissioner (Appeals) rightly rejected the refund claim 5. After hearing both the sides and on perusal of the record, I find that the appellant shown in the balance sheet as on 31.3.2000 as "Excise Duty Protest Gallery". It is revealed from CA's certificate that account till date. The Commissioner (Appeals) held that merely showing this duty has not been debited to the profit and loss account does not by itself establish that amount has not been recovered from the buyers. I final that the period of dispute is 1999-2000 and the appellant specifically mentioned in their balance sheet under the heading "excess duty account under the protest Gallery" which was totally ignored by the lower appellate authority, I find force in the submission of the ld. Advocate that the Commissioner (Appeals) brushed aside evidences without going the merits therein. Accordingly, the impugned order is set aside and the Commissioner (Appeals) is directed to consider the refund claim in the light of decisions. Both the appeals are allowed by way of remand.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com