

Super Pack Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-22-2007

Judge : R Abichandani, N T C.N.B.

Appellant : Super Pack

Respondent : Commissioner of C. Ex.

Judgement :

1. None has appeared for the appellant. Accordingly, we are disposing of the appeal after hearing the learned DR and perusing the record.
2. Duty demand of about Rs. 70,000/- has arisen on account of a finding that the appellant had under valued "Oily Tape Waste" which was used for captive consumption. The appellant had valued the goods @ Rs. 4/- per kg. while the revenue has fixed a value of Rs. 8.62 per kg. for the purpose of demanding the differential duty.
3. The contention of the assessee is that price would vary according to the variety. It is being pointed out that the appellant was disposing of superior varieties of waste like "Super White Tape Waste @ Rs. 10/- and Colour Tape Waste @ Rs. 8/- per kg. It is the contention that the Oily Tape waste in question was very inferior and revenue is in an error in adopting the price of superior waste for the purpose of valuing inferior material. It is also on record that the same rate had been submitted by the party and under an adjudication order No. 68/98 dated 8-7-1998, the Asstt. Commissioner had dropped the duty demand.

The submission is that in identical facts, revenue cannot take different stands.

4. We find merit in the appellant's contention. Record makes it clear that the waste generated was of different grades and fetched different prices. Therefore, inferior variety could not be valued at the price applicable to superior variety. The issue remains settled between the parties by the aforesaid earlier order of the Asstt. Commissioner.

5. In the result, the appeal is allowed after setting aside the impugned order.

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