

Electric Controls and Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-15-1990

Reported in : (1991)(34)LC223Tri(Delhi)

Judge : G Agarwal, R T V.

Appellant : Electric Controls and

Respondent : Collector of Central Excise

Judgement :

1. Being dissatisfied with the rejection of the refund claim by the authorities below the appellants have filed the present appeal.

2. Shortly stated the facts of the case are that during the period from 1.4.1988 to 4.7.1988 the appellants cleared the goods on payment of excise duty at the appropriate rate, but subsequently filed refund claim for Rs. 3,84,197.28 on the ground that they were entitled to avail concessional rates of duty under Notification No. 175/86. The same was rejected by Assistant Collector observing that the appellants were availing SSI exemption benefits during the preceding Financial year 1987-88, but they started clearances on full rate of duty for reasons unknown. The Assistant Collector has observed that the appellants had paid the duty as per their classification lists and the amount of duty has also been collected from the buyers and they were not entitled for refund as this would amount to undue enrichment.

Against that order of the Assistant Collector the appellants preferred their appeal before the Collector (Appeals) but without success. Hence the present appeal.

3. Arguing on behalf of the appellants Shri Daya Sagar, learned Consultant submitted that the rejection of the refund claim by the authorities below on the ground of unjust enrichment is illegal when it is not in dispute that the appellants were entitled to avail concessional rates of duty under Notification No. 175/86. To buttress his submission he cited the decision rendered by a three Member Bench of this Tribunal in the case of Anand Metal and Steel Works v. Collector of Central Excise wherein after threshing out the legal position it was held by the Tribunal that Refund/Relief is not deniable on the ground of unjust enrichment by authorities acting under the Central Excises & Salt Act.

4. In reply Shri S.K. Sharma, learned JDR reiterated the submissions made by the department in the said case of Anand Metal & Steel Works, supra, which was not accepted by the Bench.

5. Before we proceed to consider the arguments raised by the parties it may be stated that sufficient time was given to the department to ascertain as to whether any appeal was filed by the Revenue against the said decision of the Tribunal rendered in the case of Anand Metal and Steel Works, supra, or against the two other judgments namely Collector of Central Excise Rajkot v. Decora Ceramics Pvt. Ltd. and Collector of Central Excise Guntur v. Andhra Asphalt (P) Ltd. , wherein the same view was taken by the Tribunal and on which reliance was also placed while deciding the case of Anand Metal & Steel Works, supra. Now Shri S. K. Sharma, learned JDR informs that no such appeal has been filed.

6. We have considered the submissions. It is not in dispute that the appellants were entitled to avail concessional rates of duty under Notification No. 175/86. Thus, following the ratio of the said decision rendered by this Tribunal in the case of Anand Metal & Steel Works, supra, we hold that the authorities below erred in rejecting the refund claim of the appellants only on the ground of unjust enrichment.

Needless to state that while deciding the case of Anand Metal & Steel Works, supra, the Tribunal also took note of the judgment of the Bombay High Court rendered in the case of Roplas India Ltd. v. Union of India on which the Collector (Appeals) had 7. In view of the above we set aside the impugned order and allow the appeal with consequential relief to the appellants.

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