(2011) 01 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Central Excise Appeal No. 28 of 2010

Banke Bihari Process Pvt. Ltd. APPELLANT

Vs

Commissioner of C. Ex., Jaipur- II RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35(H)

Citation : (2012) 275 ELT 37

Hon'ble Judges : Arun Kumar Mishra, C.J;P.C. Tatia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred u/s 35(H) of the Central Excise Act, 1944 against the judgment and award dated 11-2-2010 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No. 823/2005.

2. The appellant has prayed for refund of the amount which has been declined on the ground that appellant has failed to establish that they had not passed on duty burden upon the consumers. The adjudicating authority has observed that parameters necessary for proving out the refund of duty have not been established. The Commissioner (Appeals) has confirmed the order-in-appeal. The Tribunal has also observed that factual data in support of the submissions raised for refund has not been produced. The Tribunal has also observed that the record could not disclose that as to what was the portion of price related to the gallery along with the duty liability and the detail break-up of the price charged for the goods prior to and after removal of gallery, it was difficult to accept the contentions sought to be raised on behalf of the appellants. In the absence of data, mere contention regarding the quantum of price cannot be a justification to reach to the conclusion that the appellant had not passed on the duty burden upon the consumers. The appeal has been dismissed on the basis of material available on the record.

3. Learned counsel Mr. Manoj Bhandari has submitted that in other similar cases, refund has been ordered by the Tribunal and excise levy has been held to be unconstitutional. The levy was not passed on to the buyers as such refund of amount was required to be made.

4. After hearing learned counsel for the appellant at length, we are satisfied that as appellant has not been able to establish the portion of price that related to the gallery along with the duty liability and the detail break-up of the price charged for the goods prior to and after removal of gallery has not been established.

5. Learned counsel has submitted that it was admitted that duty was paid later on by the appellant, hence, it could not have been passed on. We do not find anything to suggest that it was an admitted fact.

6. Following reasons have been given by the Tribunal in its order :-

5. To the specific query, as regards the factual data in support of the said submission, the learned Advocate candidly submitted that the records do not disclose production of any such data. However, she submitted that the analysis of the materials on record sufficiently reveal that such price remained static even after removal of the gallery.

6. Once the record could not disclose that as to what was the portion of price that related to the gallery along with the duty liability and the detail break up of the price charged for the goods prior to and after removal of gallery, it is difficult to accept the contentions sought to be raised on behalf of the appellants. Besides there is also a decision in this regard which has been relied upon by the Commissioner (Appeals) in its judgment. In any case, in the absence of data, mere contention regarding the quantum of price cannot be a justification to jump to the conclusion that the appellants had not passed on the duty burden upon the consumers. Undisputedly, the burden in that regard was upon the appellants which the appellants have failed to discharge. Being so, no fault can be found with the concurrent finding arrived at by both the authorities below on details analysis of all the materials available on record. Hence, the appeals fail. The appeals are accordingly disposed of.

7. It is apparent from paragraph 5 of the order of the Tribunal that it was not disputed that records do not disclose production of relevant data necessary for refund.

8. Consequently, we find that the appellant has failed to establish that they had not passed on duty burden upon the consumers, hence, refund would have amounted to unjust enrichment.

9. We do not find any illegality in the order passed by the Tribunal. Resultantly, the Central Excise Appeal being devoid of merit stands dismissed.