(2011) 03 KAR CK 0368

In the Karnataka High Court

Case No : C.E.A. No. 16 of 2009

Commissioner of C. Ex. APPELLANT

Vs

Om Pharmaceuticals Ltd. RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Citation : (2011) 268 ELT 79

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; V. Laxmi Kumaran, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal 2008 (232) E.L.T. 309 (Tri.-Chennai) which held that the Doctrine of Unjust Enrichment is not applicable to the facts of this case and therefore the Assessee is entitled to the refund of the duty paid under protest.

2. The Assessee is M/s. Om Pharmaceuticals Ltd. The Assessee cleared the ''self generated alcohol'' an item which is not excisable. However when the Department insisted on payment of duty, they paid the amount ''under protest''. Thereafter the original authority held that the said amount was non-excisable and sanctioned a refund of an amount of Rs. 7,49,932/-. However, the amount was credit to the Consumer Welfare Fund on the ground of unjust enrichment. Aggrieved by this order, the Assessee preferred an appeal to the Tribunal contending that at the time of clearance of the goods, there was an understanding between the Assessee and the buyer. Consequent to the order of the original authority, the buyer raised debit notes on the Assessee for the amount of duty the Assessee had paid on preparations of self generated alcohols and passed on to it. Accordingly, the Assessee repaid the duty collected from the buyer and therefore, this is not a case of unjust enrichment. Accepting the said case, the Tribunal held that they have established their claim with documentary

evidence i.e., in pursuance of the debit notes raised by the buyer, they have repaid the duty paid by him to the Assessee and therefore a case of unjust enrichment is not made out from the facts of this case and as such, they were entitled for refund. Accordingly, the Tribunal has ordered for refund. Aggrieved by the said order, the revenue is in appeal.

3. The learned Counsel for the revenue assailing the impugned order contends that in view of the judgment of the Apex Court, the Assessee is not entitled to the amount ordered to be refunded on the ground of unjust enrichment and as such, the order passed by the original authority is in accordance with law and the Tribunal has committed an error in affirming the said order.

4. Per contra, the learned Counsel for the Respondent supporting the impugned order contended that the Doctrine of Unjust Enrichment applies only in the event of an Assessee having passed on the burden of duty to the customers, then he would not be entitled to the refund of the said amount by virtue of any order passed by the authorities upholding the exemption or ordering for refund of the amount on any other ground.

5. In this case, the duty was collected and after the order of the original authority the duly was repaid in terms of the understanding between the Assessee and the buyer. It is clear that the Assessee has not passed on the duty liability to the customers though initially he had passed on the liability, he has returned the said duty collected from the buyer. Therefore, he is entitled to get back the duty, which he has paid, which in law he was not liable to pay as held by the original authority. Therefore, the Tribunal was justified under the facts of this case in upholding that the Doctrine of Unjust Enrichment is not attracted to the facts of this case. In the facts and circumstances of this case, we do not see any infirmity in the order passed by the Tribunal and does not call for any interference.

6. Accordingly, appeal is dismissed and we answer the substantial questions of law framed in this appeal at the time of admission in favour of the Assessee and against the revenue.