(2006) 11 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No. 63 of 2004

Commissioner of C. Ex. — APPELLANT

Vs

Sambhav Processors Pvt. Ltd. — RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Citation : (2007) 207 ELT 511 : (2007) 5 STR 81

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the revenue proposing following question of law:

Whether the Tribunal is correct in allowing the refund to the appellant whereas the party has failed to produce evidence before the adjudicating authority and Commissioner (Appeals) about their plea that incidence of duty had not been passed on to the buyers?

2. The petitioner contested its liability to pay duty and paid the same under protest. Subsequently, it was found that the petitioner was not liable to pay duty as its activities did not amount to manufacture. On this finding, the petitioner applied for refund, on which it was directed that the refund be credited to the Consumer Welfare Fund as doctrine of unjust enrichment was attracted, the petitioner having passed on the burden of duty to the consumer.

3. The Tribunal reversed the above finding. It was observed as under:

From the record it is quite evident that the appellants produced before the authorities below the GPI, balance Sheet, price list, ledger, cash book etc. but none of these documents had been even considered by the authorities below. From these documents and the copies of the gate passes invoices which have been placed on record, it is quite evident that the appellants had not passed on the incidence of duty, to the suppliers during the period in dispute. They had only charged the job work charges from them. Therefore, they are entitled to the refund of the disputed amount and it could not be ordered to be credited to the Consumer Welfare Fund.

4. When the appeal came up for hearing on 18-10-2005, this Court passed the following order:

In support of his submission that amount of duty, deposited by the petitioner, under protest, has been passed on to the consignee, namely, M/s Oswal India Pvt. Ltd., learned Counsel for the Revenue invited our attention to the copies of invoices in form GP-I. We are, prima facie, of the view of that the said documents only indicate the factum of deposit of the duty and not the fact that the same has been recovered by the petitioner from M/s. Oswal India Pvt. Ltd. learned Counsel for the Revenue prays for some time to seek instructions on this aspect of the matter. At request, adjourned to 13-2-2006.

5. The matter has, thereafter, been adjourned thrice but the above order has not been complied with.

6. We have heard learned Counsel for the appellant.

7. As already observed in the order of this Court dated 18-10-2005, documents relied upon by the revenue were not enough to show that the burden had been passed on. Copies of invoices in form GP-I, only showed that duty was deposited and not that the petitioner had recovered that duty from M/s Oswal India Pvt. Ltd., as sought to be contended.

8. In view of the above, the appellant having failed to produce any other material, we are unable to hold that any substantial question of law arises.

9. Dismissed.