
(2010) 02 P&H CK 0072
In the Punjab And Haryana At Chandigarh

GMP Finishing Mills

APPELLANT

Vs

Commissioner of C. Ex.

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B(1)

Citation : (2010) 254 ELT 608

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—M/s. GMP Finishing Mills, Amritsar has filed this appeal challenging the order (Annexure P-6) dated 29-3-2007 2007 (119) ECC 141 , passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal"), vide which it was held that the appellant has not produced any reliable material on record to show that duty paid by it in respect of the galleries had not been passed on to the buyers of the goods and consequently the appellant was not entitled to any refund.

2. Briefly the facts of the case are that the appellants are engaged in processing man-made fabrics with the aid of power, steel and hot air stenters. They were paying duty on actual capacity as determined by the Commissioner, Central Excise. The duty was paid on the basis of size of the chamber. The Revenue was of the opinion that the appellant is also liable to pay duty on the galleries which were a pollution control equipment. The duty was paid on the basis of size of the chamber and as such the size of the galleries was treated as liable to duty and accordingly the appellant paid duty for the period from June, 1999 to August, 1999 and October, 1999 to March, 2000 amounting to Rs. 5,22,000/- @ Rs. 58,000/- per month for nine months.

3. The question, whether similar manufacturers are liable to pay duty on the galleries, came up for consideration before the Hon'ble Supreme Court in the

case of CCE, Jaipur v. Sangam Processors (Bhilwara) Ltd. in which the Hon''ble Apex Court vide its judgment reported as Commissioner of Central Excise Vs. S.P.B.L. Limited, held that galleries were not liable to pay duty.

4. On the basis of the aforementioned judgment, the appellants claimed refund of the duty paid by them. The Assistant Commissioner, Central Excise, Amritsar, who was the adjudicating authority, sanctioned the refund claim, however, it ordered that as the appellant has not shown that it has not recovered the duty from its buyers, therefore, refund was ordered to be transferred to the Consumer Welfare Fund vide its order dated 5-8-2004.

5. The appellant filed an appeal before the Commissioner, who vide its order dated 29-3-2005, held that although there is no dispute regarding the admissibility of refund on the duty already paid on the galleries at the instance of the Department, however, as the appellant has not produced any evidence to show that they have not adduced of the incidence on duty paid on the galleries to the customers, therefore, the adjudicating authority has rightly applied the doctrine of unjust enrichment and issued directions to credit the amount of duty paid by the appellant to the Consumer Welfare Fund.

6. Aggrieved by the aforementioned order, the appellant filed an appeal before the Tribunal, which has dismissed the appeal by holding that the appellant has failed to adduce any material to show that duty was paid by it in respect of the galleries and the same has not been passed on to the buyers of the goods.

7. Learned Counsel submits that the following question of law arise in the present appeal:

Whether it is just and fair to reject the refund claim when excise duty was paid under protest and against provisional assessment order?

8. Counsel for the appellant has argued that duty was liable to be paid in respect of galleries. It is contended that once it has been held in M/s. Sangam Processors" case (supra) that size of galleries was not to be included in the chambers for the purpose of capacity determination and no duty was liable to be paid by the manufacturer, therefore, the Revenue was liable to refund the duty paid on the galleries.

9. On the other hand, counsel for the respondent has submitted that the appellant has not relied on any material to show that it has not collected the duty paid by it from the buyers of the goods. It is contended that refund of duty would tantamount to unjust enrichment of the appellant, as it has already recovered the duty from the buyers and would be getting the refund also, if the appeal is allowed, which is impermissible.

10. We have heard the counsel for the parties at length.

11. The main issue involved in the present appeal is that doctrine of unjust enrichment is applicable to the facts of the present case or not? As far as the

payment of duty on the galleries is concerned, it is not in dispute that the appellant was not liable to pay duty on the same and was entitled to refund. However, before getting the refund, the appellant had to place on record sufficient material to show that it had paid the duty itself and had not passed on the burden on to his buyers. In the present case, no material has been placed on record by the appellant to show that it has not recovered the duty paid by him from his buyers and hence the appellant cannot be allowed to receive the refund as that would tantamount to unjust enrichment.

12. Apart from the above. Section 11B(1) specifically provides that application for refund shall be accompanied by such documentary or other evidence, as the applicant may furnish, in order to establish that amount on duty of excise in relation to which the refund is being claimed was paid by him and the incidence of said duty has not been passed on by him to any other person. In the absence of any material to show that incidence of duty has not been passed on to any other buyer, it would have to be presumed that the appellant has collected the duty from his customers. The appellant has failed to discharge the legal obligation as no documentary or any other proof in this regard has been adduced by it. The departmental authorities have rightly relied on the Judgment of the Hon''ble Supreme Court in Commissioner of Central Excise, Mumbai-II Vs. Allied Photographics India Ltd., , wherein it has been held that doctrine of unjust enrichment could be validly invoked.

13. In view of the above, as the appellant has failed to prove that it has not recovered the duty paid by him from any of his customers and has thus, failed to discharge the onus, hence the appellant is debarred from taking the amount of refund as that would amount to unjust enrichment. The orders of the Tribunal as well as authorities below in directing the refund amount to be credited to the Consumer Welfare Fund is upheld. The question posed is answered against the appellant and it is held that the Revenue was fully justified in rejecting the refund claim, as the appellant has failed to adduce any documentary or other evidence to show that duty paid by him in respect of galleries has not been passed on to the customers of the goods.

14. The appeal, therefore, is devoid of any merit and the same is dismissed.