(2001) 01 DEL CK 0105

In the Delhi High Court

Case No : C.E.A. Case No. 17 of 2000

Jaipur Polyspin Limited — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B(2)

Citation : (2002) 79 ECC 544 : (2001) 134 ELT 346

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Jitendra Singh, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard.

Petitioner seeks for reference of certain questions, stated to be questions of law, arising out of the order of the Customs Excise and Gold Appellate Tribunal (in short CEGAT) in Appeal No. E/1413/94-D dated 9th August, 1999.

Following are the questions in respect of which petitioner seeks reference.

"1. Whether in face of material evidence on record to establish that the burden of duty of Central Excise had not been passed on by the Applicant Company to its customers, the Collector of Central Excise (Appeals) has erred in law in holding that the claim for refund of duty of Rs. 9,24,526/- filed by the Applicant Company is admissible on merits as well as on the ground of payment of duty under protest, but directed the credit of the same to the consumers welfare fund on the ground that the bar of unjust enrichment will operate against the Applicant Company?

2. Whether the affidavits of the customers declaring that the applicant Company had charged and they had paid the duty at the effective rate as then applicable under the Central Excise Old Tariff Heading No. 18 III (i)?

3. Whether the certificate of the Chartered Accountant is conclusive evidence to show that the company had discharged the burden of higher rate of duty without passing on the same to its consumers/customers?

4. In absence of any material contrary to records and the evidence produced by the applicant company, whether the Collector and the Tribunal have erred in summarily rejecting the claim of refund of the Applicant Company on surmises and assumptions?"

2. Collector of Central Excise held that claim for refund of duty of Rs. 9,24,526/- filed by the petitioner is admissible on merits as well as on the ground of payment of duty under protest, but had directed credit of the same under Sub-section (2) of Section 11B of the Central Excise Act, 1944 on the ground that the bar or unjust enrichment will operate against them. The Collector was of the view that there was sufficient evidence place on record, contrary to what the petitioner claimed to show about passing of duty burden to the customers. In appeal, certificate of chartered accountant and certain affidavits and invoices were referred to substantiate petitioner''s stand, that the duty burden had not been passed by the petitioner to customers. Tribunal considered the stand of the petitioner as well as that of the Revenue and disposed of the appeal with the following observations :-

"We have carefully considered the submissions of both sides and perused the documents highlighted by the learned Counsel. In our view, these documents do not bear out the contention that the burden of duty had not been passed on to the assesseds'' customers. There is nothing in the invoices which would indicate this. The Chartered Accountant''s certificate also is not conclusive of the contention as it only certifies that a particular sum of approximately Rs. 6.71 lakhs appears in the books of account of the appellants as "excise duty paid under protest account" and this cannot be interpreted as proof of non-passing of duty burden on their customers during the relevant period by the appellants. We, Therefore, find that the appellants have not been able to satisfactorily explain that the duty burden had not been passed by them during the relevant period to their customers and, Therefore, we see no reason to interfere with the impugned order. Accordingly, we uphold the same and reject the appeal."

3. Learned Counsel for the petitioner submitted that, in view of the materials produced before the authorities, the stand of the assessed should not have been rejected.

4. We find that, with reference to the materials on record. Tribunal has recorded a finding of fact that petitioner has not been able to satisfactorily explain, that duty burden had not been passed on by it during the relevant period to customers. Conclusions being essentially factual, do not give raise to any question of law.

Petition is, Therefore, dismissed.

