(2015) 07 AHC CK 0195

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 97 of 2005

Sanat Products Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Citation : (2015) 323 ELT 682

Hon'ble Judges : Tarun Agarwala, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; N.K. Chatterjee, SSC and S. Chopra, Advocates for the Respondent

Judgement

1. Heard Sri A.P. Mathur, the learned counsel for the appellant and Sri. B.K.S. Raghuvanshi, the learned counsel for the Department. The appeal was admitted on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Tribunal was justified in law in holding that merely because the appellant had charged uniform prices from all its customers, it would be treated that the burden of excise duty had been passed on so as to deny the refund on the ground of unjust enrichment?"

2. The appellant applied for refund, which was rejected on the ground, that it amounts to unjust enrichment. The sole contention of the appellant was that they had deposited the duty under protest and that they had not passed on the sale duty to its customers, inasmuch as, the sale price remained constant prior to the imposition of duty and after the imposition of duty which leads to a presumption that the duty was not passed on the customers. The fact, that the sale price remained constant does not lead to a conclusion that the duty has not been recovered from the customers as held by the Supreme Court in CCE, Mumbai-II v. Allied Photographics India Ltd., 2004 (61) RLT 602 (SC) : 2004 (166) E.L.T. 3 (S.C.), wherein the Supreme Court held:-

"Before concluding, we may state that uniformity in price before and after the assessment does not lead to the inevitable conclusion that incidence of duty has not been passed on to the buyer as such uniformity may be due to various factors. Hence, even on merits, the respondent has failed to make out a case for refund."

3. In the light of the aforesaid and in the absence of any decision to the contrary, we are of the opinion, that the matter stands conclusively settled by the decision of the Supreme Court.

4. In the light of the aforesaid, the question of law is answered against the assessee. The appeal is dismissed.

