

2013(1) ECS (76) (Tri-Mad)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

M/s KONE Elevator India Pvt. Ltd.

Versus

Commissioner of Central Excise, Chennai -IV

E/988/2003

[Arising out of Order-in-Appeal No. 998 (M-IV), dated 01.09.2003 passed by the Commissioner of Central Excise (Appeals), Chennai]

M/s KONE Elevator India Pvt. Ltd.

Appellant

Versus

Commissioner of Central Excise,
Chennai -IV

Respondent

Appearance:

Shri Dwarakesh, Adv.
Shri D.P. Naidu, SDR

For the Appellant
For the Respondent

CORAM

Hon'ble Shri P.K. Das, Judicial Member

Hon'ble Shri Mathew John, Technical Member

Date of hearing: 09.01.2013

Date of decision:09.01.2013

FINAL ORDER NO. 400132013 dated 9.1.2013

We agree with the submissions of the learned AR for the Revenue that uniformity of price cannot be bar for unjust enrichment. The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Mumbai-II Vs. Allied Photographics India Ltd.

Vs CCE, reported in 2004 (166) E.L.T 3 (S.C.) held that consistency of price of final goods of the assessee did not materially lead to the conclusion that incidence of duty had not passed on to the customers. [Para 5]

Per P.K. Das:

1. The appellant is engaged in the manufacturing of “components of lifts”. On 15.07.2002, the appellant had filed a refund claim of Rs.80,60,061/- on finalization of provisional assessment for the period from 1987 to June, 2000. The Assistant Commissioner of Central Excise rejected the refund claim on the ground that the appellant failed to establish that the incidence of duty had not been passed by them to their customers.
2. The Commissioner (Appeals) party allowed the refund of Rs. 62,97,533/- for the period upto 24.06.1999 following the decision of the Hon’ble Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in 1997 (89) E.L.T. 247 (S.C.). However, the balance refund claim of Rs.17,62,528 for the period beyond 25.06.1999 was rejected in view of the fact that the concept of unjust enrichment is built into the erstwhile Rule 9B with effect from 25.06.1999 vide Notification No. 45/99-CE (NT).
3. The learned counsel for the applicant Shri Dwarakesh contended that the Commissioner (Appeals) had not given any reason for rejection of this amount in the impugned order. He submits that the goods were sold on composite price and the contract did not provide for the price variation due to applicability of excise duty, and, therefore, principle of unjust enrichment would not apply. He relied on the decision of the Tribunal in the case of Swarup Fiber Industries Ltd. Vs Commissioner of Central Excise, Meerut reported in 2000 (120) E.L.T. 510 (Tri-Del). He also submits that they may be given an opportunity to produce documentary evidence to the lower authority.
4. The learned AR for Revenue strongly opposed the appeal of the appellant and reiterated the findings of the Commissioner (Appeals). He submits that it is well settled by series of decisions of the Tribunal that principle of unjust enrichment would be applicable, even when the price remains the same.
5. After hearing both sides and on perusal of the records, we find that the Commissioner (Appeals), rightly allowed the amount of refund upto 24.06.1999 following the decision of the Hon’ble Supreme Court in the case of Mafatlal Industries (supra). Thereafter, the principle of unjust enrichment is applicable as per amendment of Rule 9B of the erstwhile Central Excise Rules, 1994 by Notification No.45/99-CE(NT), dated 25.06.1999. The Hon’ble Supreme Court in the case of Union of India Vs. M/s Solar Pesticide Pvt. Ltd. Reported in 2000 (116) E.L.T. 401 (SC) held that the principle of unjust enrichment would be applicable even in the case of captive consumption. We agree with the submissions of the learned AR for the Revenue that uniformity of price cannot be bar for unjust enrichment. The Hon’ble Supreme Court in the case of Commissioner of Central

Excise, Mumbai-II Vs. Allied Photographics India Ltd. Vs CCE, reported in 2004 (166) E.L.T 3 (S.C.) held that consistency of price of final goods of the assessee did not materially lead to the conclusion that incidence of duty had not passed on to the customers. We find that in the instant case, no serious attempt has been made on the part of the appellant neither before the Commissioner (Appeals) nor before this Tribunal so as to establish that the incidence of duty has not been passed on to the customers. Hence, we do not find any reason to interfere with the order of Commissioner (Appeals). As such, we dismiss the appeal filed by the appellant.

(Dictated and pronounced in open court)