

Customs, Excise and Gold Tribunal - Tamil Nadu

Hindustan Photo Film Mfg. Co. vs Commissioner Of C. Ex. on 12 September, 2005

Bench: P Chacko, J T T.K.

ORDER T.K. Jayaraman, Member (T)

1. This appeal has been filed against Order-in-Appeal No. 41/93, dated 31-3-93 passed by the Commissioner of Central Excise (Appeals), Chennai.
2. The appellants are manufacturer of Cine films (unexposed), X-Ray films, Graphic Art Films and sensitised photographic colour paper etc. All the above are excisable commodities. In the impugned order, it was held that the process of cutting, slitting and perforation of jumbo rolls into finished cinematograph film ready for use would amount to manufacture. It was also held that the refund claimed by the appellants would be hit by doctrine of unjust enrichment. The refund claim arose on account of the fact that the appellants contended that the above processes do not amount to manufacture but cleared the goods on payment of duty.
3. Smt. R. Bhagya Devi, Id. SDR appeared for the Revenue. None appeared for the appellants. Ld. SDR submitted that the issue was kept pending because CEGAT has already passed an order favourable to the appellants and the Department's appeal in the Supreme Court is pending. She further submitted that the Apex Court's judgment in the case of Kores India Ltd. v. CCE, Chennai would be favourable to the Revenue. In the above case, it has been held that typewriter/telex ribbons in jumbo rolls of is cut and wound/spooled into metallic spools. A distinct resultant product emerges. This product has distinct name, function and use. Since the item in question is jumbo rolls of film and also in the appellants' own case the Tribunal has taken a decision in favour of the appellants, in the absence of stay of CEGAT's order by the Supreme Court we are bound to follow the same. Hence, we hold that no manufacturing activity is involved in cutting, slitting and perforating the jumbo rolls. Hence the appellants are in principle entitled to refund. However, we are remanding the matter to the original authority for examining the question of unjust enrichment.

(order dictated and pronounced in open Court)