IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.1.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.Nos.625 to 627 of 2012

M/s.Hindustan Photo Films
Manufacturing Co. Ltd.,
Indu Nagar, Ootacamund. ..Appellant/Appellant

Vs.

1. Customs, Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road,
Chennai 600 006.

2. The Commissioner of Central Excise,
Salem. ..Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 35 of Central Excise Act, 1944 against the Final Order Nos.E/1235, E/1211 and E/1239 of 2004 dated 4.3.2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.V.Kalyanaraman

For Respondents : Mr.V.Sundareswaran
Senior Standing Counsel

COMMON JUDGMENT
(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The present Appeals have been filed by M/s.Hindustan Photo Films Manufacturing Company Limited, which said to have gone in liquidation under the Winding up process by the Company Court, aggrieved by the order passed by the learned CESTAT on 4.3.2011.

2. The learned Tribunal held against the Assessee that the Assessee was not entitled to any refund of Excise Duty as if it is wrongly collected on the ground that it passed on the burden of Excise Duty to its customers by separately indicating the Excise Duty in addition to the Government-regulated price. The

relevant portion of the order passed by the Tribunal is quoted below for ready reference:-

> "In respect of the aforementioned time-barred claims as well as other claims, we further find that according to the appellant-assessees own submissions, the price was determined according to BICP norms and regulated by the Government orders. As such, they had no flexibility to sell the goods at a different price or composite price inclusive of the excise duty. The excise get passes and the invoices also show that they have been indicating the excise duty separately in addition to the Government-regulated price and collecting both the amounts from their customers. Under the circumstances, the case laws cited by the learned Senior Advocate do not advance the case of the appellant-assessee. The law of unjust enrichment cannot be interpreted vaguely or in general terms. The language of the legal provision is unambiguous and clear. Since the excise duty has been separated shown in the gate passes and invoices, and have been separately collected from the customers, the Tribunal cannot be called upon to add it to the Government-regulated price charged by the appellant-assessee and compare the price plus duty against the cost and hold that the appellant-assessee has not passed on the excise duty burden to their customers, when they have actually done so. We find that in the case of Xerox Modicorp Ltd Vs. Commissioner of Central Excise, Mumbai reported in 2001 (134) E.L.T. 523 (Tri.Del.), it was held that the appellant having charged excise duty separately to customers in the copies of relevant get passes and invoices filed by them, customers paid this amount to the appellant as duty of excise and, therefore, the refund claim was hit by bar of unjust enrichment. It was also held therein that provisions relating to unjust enrichment under section 11B of the Central Excise Act, 1944 being retrospective in effect, was applicable to all refund claims. We note that this order of the Tribunal in the case of Xerox Modicorp cited supra has been upheld by the Hon'ble Supreme Court as reported in 2002 (142) E.L.T. A.173(S.C.)"

3. Having heard the learned counsel for the parties, we are convinced that in view of the factual finding returned by the learned Tribunal, there is no question of taking a contrary view at the instance of the Assessee. Therefore, the Appeals are liable to be dismissed and accordingly, the same are dismissed. No order as to cots.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Customs, Excise and Service Tax
 Appellate Tribunal,
 South Zonal Bench,
 Shastri Bhawan Annexe,
 1st Floor, 26, Haddows Road,
 Chennai 600 006.

2. The Commissioner of Central Excise,
 Salem.

+1 cc to M/s.V.Sundareswaran,Advocate Sr.No. 3958

AKM/02.03.2020/3P- 4C /

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