

Commissioner of Central Excise Vs. Ralson Tubes Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-21-1998

Reported in : (1999)(105)ELT197TriDel

Appellant : Commissioner of Central Excise

Respondent : Ralson Tubes Ltd.

Judgement :

1. The short question to be decided in this appeal filed by the Revenue against the Order of the Commissioner (Appeals), Indore is as to whether doctrine of unjust enrichment is applicable even in cases where refunds have been sanctioned and paid to the assesseees.

2. Learned DR, Shri Srivastava submits that it has been held by the Hon'ble Apex Court, both in the case of Mafatlal Industries reported in 1997 (89) E.L.T. 247 [at paragraph 99 (vii) at page 329] and in the case of New Vinod Silk Mills reported in 1997 (95) E.L.T. 165 that even in cases of refund already made are governed by the decision of the Supreme Court relating to applicability of the doctrine of unjust enrichment decided in the Mafatlal case. He, therefore, prays that the impugned order may be set aside and the appeal allowed. Learned Counsel for the respondents fairly concedes that in view of the judgments of the Apex Court cited above, it would not be open to argue that the doctrine is not applicable in cases like the present one where the assesseees already received the refund. However, he prays that the case maybe remanded in the light of the above judgment.

3. We are of the view that this is a fit case for remand since the learned DR is correct in pointing out that the doctrine of unjust enrichment is attracted even in the present case. We, therefore, set aside the impugned order and remand the matter for consideration by the Assistant Commissioner who shall examine the contention of the assessee based upon the evidence furnished by them that duty burden has not been passed on to their customers. He shall pass fresh orders in accordance with the orders issued by the Hon'ble Supreme Court in the cases mentioned above, after extending a reasonable opportunity to the assessee of being heard in person.

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