Jindal Solvent Extractions Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-22-1999

Reported in : (1999)(113)ELT159TriDel

Appellant : Jindal Solvent Extractions

Respondent : Commissioner of C. Ex.

Judgement :

1. The short point for determination in this appeal is whether the appellants' appeal if accepted, will amount to unjust enrichment.

2. The facts of the case in brief are that the appellants are engaged in the manufacture of Solvent Extraction. They manufacture Solvent Extracted oil by solvent method from Rice Bran. The appellants were paying CESS in terms of the Vegetable Oil Cess Act, 1983. The Department held that CESS was payable on the oil manufactured by the appellants. The appellants paid the CESS and filed a refund claim. The refund claim of the appellant was rejected by the Asstt. Collector on the ground that the incidence of CESS was not borne by the appellant but was passed on to the customers and therefore, in case the refund was sanctioned it will amount to unjust enrichment under Section 11B of the Central Excise Act, 1944. He, therefore, rejected the refund claim.

The appellant went in appeal before the ld. Commissioner (Appeals) who while passing the Order-in-Appeal observed "I have considered the matter. Since the appellants have not disputed the fact that the incidence of CESS paid by them had been passed over the buyers, the refund has been rightly rejected by the Asstt. Collector." 3. Arguing the appeal Shri P.R. Srivastava, ld. Consultant submits that in terms of the orders passed by various Courts, CESS was not leviable on the oil extracted by solvent extraction method from Rice Bran. He submits that since CESS was not leviable, the collection of CESS was prohibited and illegal in terms of Article 265 of the Constitution of India. He submitted that since CESS was illegally collected from them, therefore, the question of its retention by the Govt. did not arise.

Ld. Consultant therefore, prays that the appeal may be allowed and amount paid by them as CESS may be refunded.

4. Shri R.S. Sangia, ld. DR submits that the question before the Tribunal is whether the incidence of CESS was passed over to the buyer/customer or not. He submitted that the authorities below have held that the incidence of CESS was not borne by the appellant and therefore, any refund of the amount shall be prohibited under the doctrine of unjust enrichment under Section 11B of the Central Excise Act, 1944. He, therefore, prays that the appeal may be rejected.

5. We have heard the rival submissions. We find on perusal of the orders passed by the authorities below that the refund claim has been rejected in the absence of any evidence that the incidence of CESS was borne by the assessee. We find that no further evidence was produced before us. In the circumstances, we do not find any reason to interfere with the order passed by the authorities below. In the result, the appeal is rejected.