Commissioner of Central Excise, Vs. M/S Inga Laboratories Pvt Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-22-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S Inga Laboratories Pvt Ltd.

Judgement :

1. In the order out of which this application arises, the Tribunal had, relying upon decisions of the Tribunal, and of the Calcutta High Court, held that in order to recover refund wrongly sanctioned, a demand has to be raised under Section 11A of the Act, and therefore confirmed the finding to this effect arrived at by the Collector (Appeals). It therefore had held that the department's appeal fails. Although it had observed that consequent upon the amendment of Section 11B of the Act, the refund would go to the consumer Welfare Fund, if the claimant was not able to show that incidence of duty has not been passed on to the customer.

2. The application seeks reference to the High Court on the question as to whether, in absence of a claim made under Section 11A of the Act, an appeal under Section 35E(4) of the Act alone is enough to recover refund erroneously sanctioned.CCE vs Rerolling Mills 1997 (94) ELT 8 is that the demand for recovery of erroneous refund has to be raised under section 11A of the Act. This is the view that has been expressed by the Ministry of Law on the judgement, which has been accepted by the Board in its circular no. 423/56.98-CX dated 22.1.1998. Since the issue has been decided by the Supreme Court, the question of referring it to the Bombay High Court does not arise.