

Commissioner of Central Excise, Vs. M/S Sterlite Industries Ltd

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S Sterlite Industries Ltd

Judgement :

1. In the order reference, the Tribunal had held that the fact that the judgement of the Bombay High Court in Solar Pesticides Pvt Ltd vs Union of India 1992 (57) ELT 201, (holding that the principles of unjust enrichment will not apply to cases of refund of Customs duty paid on goods which are captively consumed by the importer) have been appealed to the Supreme Court did not mean that the Collector (Appeals) was not required to follow its ratio. It dismissed the department's appeal challenging its acceptance of the ratio of the judgement.
2. This application seeks to refer to the High Court the question as to whether in the case of grant of refund of duty on goods consumed captively, the doctrine of unjust enrichment would apply or not. The object of the application is made clear, that the manner is to be kept alive because an appeal has been filed to the Supreme Court.
3. On the date on which the Tribunal passed its order, it followed the judgement of the Bombay High Court, which has jurisdiction over the respondent to the appeal and the appellant Commissioner. The fact that subsequently this judgement has been set aside by the Supreme Court does not now justify any reference to the High Court. There is, in fact, no question of law on which a reference would lie to

the High Court.

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