Commissioner of Central Excise Vs. Neptune Polymers

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SooperKanoon Citation : sooperkanoon.com/23247

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-22-2001

Appellant : Commissioner of Central Excise

Respondent : Neptune Polymers

Judgement :

1. When this application seeking stay of the operation of the impugned order was called out, we find that the issue stands settled by the judgement of the Supreme Court in the case of UOI vs. Solar Pesticides 2000 (116) ELT 401. The respondents are absent although due notice was sent to them. Earlier also the respondents continued to remain absent.

We therefore take up the appeal for final disposal.

2. The Commissioner (Appeal) in the impugned order upheld the belief of the lower authority that where any goods were used captively in the manufacture of further goods, and where there was any claim for refund in pursuance to a dispute on duty paid on such consumed goods, the principle of unjust enrichment had no operator. In making the order, the Commissioner relied upon certain judgements including that of Bombay High Court reported in 1992 (57) ELT 201. That judgement was set aside by the aforementioned judgement of the Supreme Court. Therefore prima facie the claim made by the revenue in the appeal memorandum (which does not cite the Supreme Court judgement) is correct.

3. However in disposing of a number of appeals before them, the Supreme Court took into account the possibility that the assessees could show that even in this situation, the burden of duty was not passed on to the buyers, (civil appeal no. 6113/1999). In the absence of the respondents and in the absence of any memorandum of cross objection filed by them, we are unable to ascertain whether the respondents are in a position to show that they had not passed on the burden of duty to their buyers. We therefore deem it proper to allow this appeal and remand the matter back to the Jurisdictional Commissional (Appeals). He will direct the respondents to appear before him and to make appropriate statements. He shall thereafter pass appropriate order.