

Commissioner of Central Excise, Vs. M/S. Poly Bright Packs Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-23-2001

Appellant : Commissioner of Central Excise,

Respondent : M/S. Poly Bright Packs Pvt. Ltd.

Judgement :

1. This is an application for restoration of the appeal dismissed by the Order No. C-II/1149-50/WZB/2000 dated 11.4.2000. In the impugned order the Commissioner (Appeals) following the Bombay High Court Judgement in the case of Solar Pesticides Pvt. Ltd. Vs. Union of India [1992 (57) ELT 201] had held that the principle of unjust enrichment would not apply where an importer had used the inputs in the manufacture of further goods. This judgement was later reversed by the Supreme Court in the case of Union of India Vs. Solar Pesticide Pvt.

Ltd. [2000 (116) ELT 401 (S.C.). When the case came up for disposal the appellant assesseees were not present. Following the Supreme Court judgement the Tribunal dismissed the appeal Ex-parte. In the present proceedings it is claimed that the notice for hearing was not received by the assesseees appellants in time. It is also claimed that the appellants had requested for an adjournment to engage a Counsel. It is further claimed that the Supreme Court in the order had held that in the given situation also if the burden of duty had not been passed on to the buyers of the resultant manufactured goods, the benefit could be given to the importers. It is claimed that the assesseees are in a situation to tender such proof. On this ground the restoration is asked.

2. On perusal of the cited order we find that the Hon'ble Court in disposing of Appeal No. E/438/99 (it was one of the Bench appeal disposed of that order) had remanded the matter for reconsideration on this ground being advanced. We, therefore, recall our order of dismissal, allow the appeal and remand the proceedings back to the Commissioner (Appeals) for consideration denovo. He shall direct the appellants to appear before him and direct them to submit the evidence.

He shall cause verification of that evidence and for conducting such other inquiries as he may deem fit, for passing appropriate orders.

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