Kelvinator of India Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-07-2003

Reported in : (2003)(157)ELT189TriDel

Judge : A T V.K.

Appellant : Kelvinator of India

Respondent : Commissioner of Central Excise

Judgement :

1. This is an application by M/s. Kelvinator of India Ltd. for waiver of pre-deposit of erroneous refund of Rs. 6,02,673.40.

2. Shri P. Jain, learned Advocate, submitted that the Appellate Tribunal vide Final Order No. 581/98-C, dated 7-8-98 has allowed their appeal against the Order passed by the Commissioner (Appeals) on the applicability of the principle of unjust enrichment following the decision of the Bombay High Court in the case of Solar Pesticides v.U.O.I - 1992 (57) E.L.T. 201; that no appeal was filed by the Revenue against the Tribunal's Final Order; that even then the refund has been denied to them on the ground that the Bombay High Court decision in Solar Pesticides has been set aside by the Supreme Court as reported in 2000 (116) E.L.T. 401 (S.C.). The learned Advocate finally contended that once the Order passed by the Tribunal in their own case has attained the finality, the refund claim cannot be denied relying upon the decision in some other matter. I also heard Shri H.C. Verma, learned DR.3. The learned Advocate has made out a strong prima

facie case in favour of the applicants. I, therefore, stay the recovery of the entire amount demanded from them during the pendency of the appeal which is posted for final hearing on 22-9-2003.