

National Winder Vs. Collector of Central Excise

National Winder Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/31967

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-27-2003

Reported in : (2004)(91)ECC80

Judge : S Kang, a T V.K.

Appellant : National Winder

Respondent : Collector of Central Excise

Judgement :

1. In this Appeal filed by M/s. National Winder, the issue involved is whether the bar of unjust enrichment is applicable to the refund of the Central Excise Duty claimed by them.

2. We heard Shri B.L. Narsimhan, learned Advocate for the Appellant and Shri V. Valte, learned Senior Departmental Representative, for the Revenue. The learned Advocate, submitted that the Appellant had purchased electronic oscillating fans from M/s. Vikas Engineering after paying duty under protest on account of valuation dispute with the Department; that the matter happened to be referred to the Larger Bench of the Tribunal, which had held in the decision reported in 2000 (38) RLT 424 that the refund claim should be filed within six months from the date of purchase even where duty had been paid by the manufacturer under protest; that following the Larger Bench decision the Appellate Tribunal vide Final Order No. A/540/2000 NB dated 22.6.2000 rejected their Appeal on the ground that the purchaser of the goods is required to file the refund claim within six months from

the date of purchase even where the duty had been paid by the manufacturer under protest.

The learned Advocate, further, submitted that on Appeal filed by the Appellants, the Supreme Court has held in the decision reported in 2003 (56) RLT 607 (SC) that "there is no Rule or provision by which protest can be lodged by a purchaser. The wording of the proviso [to Section 11B(1)] shows that the Legislature has worded the proviso in a manner which covers all claims for refund. The wide language of the proviso shows that it covers not just claims for refunds by the manufacturer but also claims for refund by the purchaser. Thus if duty is paid by a manufacturer under protest, then the limitation of six months will not apply even to a claim for refund by the purchaser." The learned Advocate mentioned that the Supreme Court, has therefore, remanded the matter to the appropriate Authority for consideration in the light of the law laid down by the Supreme Court. He, further mentioned that the issue now left to be decided is whether bar of unjust enrichment applies to the refund of duty claimed applied by the Appellants.

3. After hearing both the learned Advocate and the learned Senior Departmental Representative, we observe that the Assistant Commissioner has rejected the refund claim as time barred and did not go into the aspect of unjust enrichment. Similarly the Commissioner (Appeals) has also not considered the refund claim from this angle as to whether incidence of duty has been passed on by the Appellants to any other person. While remitting the matter back, the Supreme Court has observed that before refund can be claimed by the manufacturer or producer, "the condition of Section 11B must be fulfilled viz., it must be shown that the amount of duty of excise in relation to which such refund is claimed was "collected from or paid" by the person claiming refund and that the incidence of such duty has not been passed on by him to any other person." Thus, the Appellant have to satisfy the Department that the incidence of duty has not been passed on by him to any other person. As this aspect has not been considered by the lower authorities, we set aside the impugned Order and remand the matter to the Commissioner (Appeals) to decide the aspect of unjust enrichment after following the principles of natural justice. The Appeal is thus allowed by way of remand.

