The Commissioner of Customs and Vs. JaIn Irrigation System Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-16-2003

Judge : S T S.S.

Appellant : The Commissioner of Customs and

Respondent : JaIn Irrigation System Ltd.

Judgement :
1. Revenue has come in appeal against the Commissioner (Appeals) order, wherein he held:- "The Department in its appeal has stated that Addl. Commissioner has not considered the aspect of unjust enrichment and once duty was paid on inputs, which are consumed captively, the refund of duty would amount to unjust enrichment. The Addl. Commissioner should not have relied upon the decision of bombay High Court in the case M/s.

Solar Pesticides case as an appeal filed by the department is pending in the Supreme Court. It was submitted that the assessee must have passed on the incidence of duty by fixing the price of their final product by taking into consideration the duty element paid on inputs.

Both Appellants and respondents given an opportunity of hearing on 24/9/97 wherein the department was represented by Shri N.N. Shaikh, Supdt., but none appeared for the respondents. The respondents int heir cross objections have stated that the Bombay High Court's judgment in the case of M/s. Solar Pesticides is applicable in their case and unjust enrichment will not apply and therefore the

Addl.

Commissioner's order should not be set aside.

I have carefully considered the submissions made by the department as well as respondent. I find that all the appeals have been filed on the sole ground that Bombay High Court's decision in the case of M/s. Solar Pesticides has not been accepted by the department and appeal has been filed in the Supreme Court. It was accepted by the deptt.'s representative Shri N.N. Shaikh that no stay in the matter has been granted by the Hon'ble Supreme Court. In such a situation, the Bombay High Court's decision was binding on the Addl.

Commissioner and I am also equally bound by the decision was accordingly department's appeal having no merits is rejected." 2. Since the Apex Court has set aside the decision of the Hon'ble Bombay High Court in the case of M/s. Solar Pesticides, the present appeal pled by Revenue is required to be allowed and the matter remitted back to the original authority to consider the application of 'Unjust Enrichment' and re-determine the refund claim payments.

Needless to add that in the remand proceedings the adjudicator will hear the respondents and consider the material the respondents may opt to place before him to prove that no unjust enrichment case arises on facts in their refund claims.

3. Appeal allowed after setting aside the impugned order as remand in above terms.