Cce Vs. Surya Roshini Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-08-2003

Reported in : (2004)(91)ECC630

Judge : P Bajaj

Appellant : Cce

Respondent : Surya Roshini Ltd.

Judgement :

1. In this appeal which has been filed by the Revenue, the issue relates to the applicability of doctrine of unjust enrichment to the refund claim of the respondents.

2. The facts are not much in dispute. The respondents paid excess duty at the time of clearance of their goods to their another division (lighting division) where these were to be used for the production of final product. Later on, the credit of the duty, so taken by the said division, was reversed by them and a debit note was issued and sent to the respondents. The respondents lodged claim for the refund of the excess duty paid, but the Deputy Commissioner through the order-in-original rejected the same. The Commissioner (Appeals) has reversed that order by holding that the doctrine of unjust enrichment is not applicable.

3. None has come present on behalf of the respondents in spite of service of notice on them for today's as hearing. No request for adjournment has been also

received from them. Therefore, I proceed to decide the appeal after hearing the learned JDR.4. The bare perusal of the record shows that the incidence of duty was passed on by the respondents to their another division, where the goods were to be used for the manufacture of the final products and they even took the credit of the duty paid by them, therefore, the question which requires consideration is, as to whether the subsequent debit note issued by the other division in favour of the respondents would make the doctrine of unjust enrichment inapplicable to the refund claim of the respondents for the excess duty paid by them initially. This issue, in my view, deserves to be re-examined by the Commissioner (Appeals) in view of the Larger Bench decision which has been rendered recently in the case of S. Kumar Ltd. v. CCE, final Order dated 17.2.2003, wherein it has been observed that subsequent debit note will have no effect on the applicability of the doctrine of unjust enrichment to the claim of the manufacture when once he has passed on the incidence of duty. Even in a case of captive consumption, this doctrine of unjust enrichment had been held to be applicable by the Apex Court in the case of Union of India v. Solar Pesticides Ltd., 2000 (116) ELT 401 (SC). The law laid down in this case has been also not taken note of by the Commissioner (Appeals) while deciding the matter.

5. In view of the discussion made above, the impugned order is set aside and the matter is sent back to the Commissioner (Appeals) for fresh decision in the light of the law laid down in the above referred cases after affording an opportunity of hearing to the respondents. The appeal of the Revenue stands allowed by way of remand.