

**Executive Engineer, Central Vs. Commissioner of Central Excise**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Oct-30-2003

**Reported in :** (2004)(92)ECC281

**Judge :** A T V.K., P Bajaj

**Appellant :** Executive Engineer, Central

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. This appeal has been filed by the appellants against the impugned Order-in-Appeal vide which the Commissioner (Appeals) has affirmed the Order-in-Original of the Deputy Commissioner who rejected the refund claim of the appellants. The facts are not much in dispute. The appellants are engaged in the generation, transmission and distribution of electrical energy. They have their divisions and sub-stations for that purpose in different parts of the State (Chattisgarh). As their activities of re-rolling, punching, bolting, cutting, drilling, etc., were considered as amounting to manufacture of the goods, they were called upon by the Department to pay the duty and also to take the Licence. They accordingly acted and paid the duty but denied that their activity amounted to manufacture of the goods. Thereafter, they lodged a claim for refund of the duty paid by them during 1.4.75 to 31.3.88 mainly on the ground that the CEGAT in the case of Arum Industries, 1986 (9) ECC 35 (T): 1986 (25) ELT 580 had taken the view that the processes involved in the fabrication activities of that company which were similar to that of the appellants did not amount to manufacture.

Their claim was rejected on the ground of limitation by the Assistant Commissioner and that order was affirmed by the Commissioner (Appeals) as well as by the Tribunal. But the appellants approached the Apex Court and that Court set aside the order of the Tribunal and held that the payment of duty by the appellants was under protest. The Apex Court directed the Assistant Commissioner to examine the refund claim of the appellants on merits.

2. After the remand, the Deputy Commissioner through order dated 23.8.2000 dismissed the refund claim of the appellants by invoking the doctrine of unjust enrichment, besides holding that the activity amounted to manufacture. That order had been affirmed by the Commissioner (Appeals) through the impugned order.

3. The learned Counsel has contended that since the duty was paid under protest, the doctrine of unjust enrichment did not apply to the case of the appellants. As such, the refund claim could not be legally rejected. In support of his contention, he has placed reliance on the ratio of law laid down in *Sinkhai Synthetics and Chemicals P. Ltd. v. CCE, Aurangabad*, 2002 (83) ELT 5 (SC); 2002 (143) ELT 17 (SC) and the Tribunal's judgment in *Tecil Chemicals and Hydro Power Ltd. v. CCE, Cochin*, 2003 (55) RLT 643. On the other hand, the learned JDR has reiterated the correctness of the impugned order.

4. We have heard both sides. We find from the record that the authorities below have found that the parts of the transmission towers were manufactured by the appellants out of the raw materials which were subjected to the processes of drilling, punching, cutting, bolting etc., resulting into emergence of a structure of iron and steel and as such their activity amounted to manufacture. But these findings cannot be even sustained in view of the ratio of law laid down in *Aruna Industries*, 1986 (9) ELT 35 (T); 1986 (25) ELT 580, wherein it has been ruled that such activity did not amount to manufacture. Moreover, in the appellants' own case for the subsequent period, it has been held by the Tribunal vide Final Order No. A/379/03-NB-C dated 16.7.2003, that their activity did not amount to manufacture. Therefore, no duty could be charged from them. Besides this, duty had been paid by them under protest as recorded by the Apex Court in its order dated 29.5.87, while reversing the earlier order of the Tribunal who confirmed the orders of the

authorities below rejecting the refund claim of the appellants on the question of limitation for having not paid the duty under protest.

That order of the Apex Court debars the Department again from urging that the duty was not paid under protest. In *Sinkhai Synthetics and Chemicals P. Ltd. v. CCE, Aruangabad* (supra) referred by the Counsel, it has been categorically ruled by the Apex Court that where duty had been paid under protest the claim for refund of the same would not be hit by the bar of unjust enrichment.

The ratio of law laid down by the Apex Court had been followed by the Tribunal in *Tecil Chemicals & Hydro Power Ltd.* (supra). In view of this position of law, the doctrine of unjust enrichment could not be invoked for rejecting the claim of the appellants for refund of the duty which they paid under protest. Therefore, the impugned order of the Commissioner (Appeals) confirming the Order-in-Original of the adjudicating authority, rejecting the claim of the appellants on the ground of unjust enrichment, is legally not maintainable, being contrary to the law and as such, the same is set aside.

6. Consequently, the appeal of the appellants stands accepted with consequential relief, if any, permissible under the law.

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