

Commissioner of Central Excise Vs. Mek Engg. and Constructions (i)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-20-2004

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Mek Engg. and Constructions (i)

Judgement :

1. Revenue is in appeal against the findings of the Commissioner of Central Excise (Appeals) that the refund claim filed on clearances made during the period 27/04/89 to 02/06/89 were eligible, as the respondents could enjoy the benefit of Notification No. 175/86 having not crossed the 2 crores limits, in spite of the figures as per balance sheet for year ending 31/03/89, as the same was for a period of 15 months due to amendments in the Income Tax Act and change in financial year. The two refunds as sanctioned were not required to be recovered in view of the Boards instructions. The grounds taken in appeal are :- ii) Reliance on Boards telex by Commissioner (Appeals) was not called for.

2. Heard Ld. DR. Respondents are absent in spite of repeated adjournment notices sent. We proceed to decide the issues. After considering, it is found :- a) There is no challenge to the finding of the Commissioner that the Balance Sheet being for a term over the period of 15 months and it is well settled that erection charges are not to be included in the assessable value of excisable goods in absence of allegation of transfer of cost of goods to erection charges. The benefit of Notification 175/86 therefore cannot be denied.

b) As regards unjust enrichment, the Constitution Bench decision in the case of Mafatlal Industries is very clear and the issue of settlement of this refund being open has to be determined along with the theory of 'unjust enrichment'.

c) The plea of Boards instructions being applicable or not has to be redetermined in the light of the decision of the Supreme Court on this issue.

d) The question of refunds therefore has to be redetermined after due notice to the respondents for that purpose the orders are set aside and are to be remitted back to the original authority to redetermine the refunds.

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