**Anant Syntex Ltd. Vs. C.C.E.**

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**SooperKanoon Citation** : sooperkanoon.com/36339

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

**Decided On :** Aug-24-2004

**Reported in** : (2005)(99)ECC21

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

**Appellant** : Anant Syntex Ltd.

**Respondent** : C.C.E.

**Judgement** :

1. In this appeal, filed by M/s. Anant Syntex Ltd., the issue involved is whether the bar of unjust enrichment will be applicable to the refund of the amount of duty paid under protest.

2. We heard Shri K.K. Anand, learned Advocate for the appellants and Mrs. Charul Barnwal, learned SDR for the Revenue. Both, learned Advocate and learned SDR, agree that the issue involved in the present appeal stands settled by the decision of the Supreme Court in the case of CCE, Mumbai-II v. Allied Photographics India Ltd., 2004 (166) ELT 3 (SC). The Supreme Court in the said judgement did not find any merit in the arguments of the respondents that the payment of duty under protest and payment of duty under provisional assessment are both "on account" payments under the Act. The Supreme Court has held that "duty paid under protest falls under Sec. 11B of the Act whereas duty paid under provisional assessment falls under Rule 9B" of the Rules;" that Section 11B deals with claim for refund whereas Rule 9B deals with making of refund, in which case the

assessee has not to comply with Section 11B.Therefore, Section 11B and Rule 9B operate in different spheres.....Hence, there is no merit in the contention of the respondents M/s. APIL that although in this case duty was paid under protest, there was no difference between such payment and duty paid under provisional assessment under the said Act." Following the judgment of the Apex Court, we find no merit in the appeal, which is rejected.