

**Govind Mills Ltd. Vs. Cce**

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

**Decided On :** Jun-01-2005

**Judge :** P Bajaj

**Appellant :** Govind Mills Ltd.

**Respondent :** Cce

**Judgement :**

1. In this appeal, the appellants have contested the correctness of the impugned order vide which the Commissioner (Appeals) has rejected their refund claim by invoking the principles of unjust enrichment.

2. None has come present on behalf of the appellants. No request for adjournment has also been received by them. Therefore, I proceed to decide the appeal after hearing Id. DR. The perusal of the record shows that the appellants have claimed refund of the differential duty paid by them during 12.10.97 to 7.12.98. The adjudicating authority allowed the refund claim but order has been in my view rightly set aside by the Commissioner (Appeals) by applying the principles of unjust enrichment.

The plea of the appellants that this principle is not attracted when the duty has been discharged under the compound levy scheme, is misconceived and cannot be accepted. In view of the law laid down by the Tribunal in the case of K.B. Rolling Mills Vs. CCE reported in 2004 166 ELT 345 wherein it has been observed that the principles of unjust enrichment is also attracted where the duty has been

paid under the compound levy scheme. Therefore, the appellants were required to prove that they have passed on the of duty to the buyers, but have failed to do. Therefore, their refund claim has been rightly rejected. The impugned order passed by the Commissioner (Appeals) is upheld and appeal is dismissed.

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