

Commissioner of Central Excise Vs. Khandelwal Lab. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-12-2005

Judge : K Kumar, S T Chittaranjan

Appellant : Commissioner of Central Excise

Respondent : Khandelwal Lab. Ltd.

Judgement :

1. Heard both sides at length. The issue involved is whether the principles of unjust enrichment under Section 11B(2) & (3) will apply to the case at hand. It is the contention of the respondents that the refund in this case arises out of finalization of provisional assessment under Rule 9B of the Central Excise Rules, 1944 and hence the principles of unjust enrichment will not apply to this case. The learned Advocate for the respondents cites the following two decisions in this regard: - (ii) CCE, Mumbai- II v. Allied Photographies India Ltd. .

2. The learned SDR argues that this is a provisional assessment case under Rule 9B and the same was finalized after the amendment of the said Rule 9B by Notification No. 45/99-C.E. (N.T.), dated 25-6-1999. It is the department's case that the specific amendment was made to subject refunds arising out of provisional assessment to the provisions of unjust enrichment under Section 11B(2) & (3). In this regard, the Id. SDR cites the decision of the Tribunal in the case of CCE, Mumbai v. Kores India Ltd. and states that all refunds arising after the date of amendment have to be dealt in the light of such amendment.

3. After considering arguments from both sides, we are of the view that in this case the refund has arisen only on finalization of the provisional assessment. We also find that at that point of time, the said Rule 9B stands amended making the provisions of unjust enrichment applicable to the refund under the said Rule 9B. Hence, we are of the view that it is a case to which principles of unjust enrichment are squarely applicable.

4. We also find that the respondents have not shown the duty amount separately in the invoices and hence, under the provisions of Sections 12A & 12B of the Central Excise Act, 1944, there is a presumption that the extra duty burden has been passed on to the buyers. In view of the above legal position, we are of the view that the impugned order passed by the lower appellate authority is not legal or correct. We set aside the same and restore the Order-in-Original passed by the original authority.

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