

Collector of Central Excise Vs. Applied Electronic Ltd. and ors.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-10-1990

Reported in : (1991)(33)LC280Tri(Mum.)bai

Judge : J T R., P Desai

Appellant : Collector of Central Excise

Respondent : Applied Electronic Ltd. and ors.

Judgement :

1. All the aforesaid stay petitions have been moved on behalf of the department requesting this Bench to stay the operation of the order of the Collector (Appeals). The issues involved are identical and there is no need to elaborate on this. Applications for the refund were filed by the respondents within the purview of Section 11B of the Central Excise Act. These were rejected by the Asstt. Collector on the ground that if the amounts are refunded, it will give unjust enrichment to the respondents. Asstt. Collector relied on the judgment of the Bombay High Court in Roplas case . When the respondents went in appeal before the Collector (Appeals), the Collector (Appeals) allowed the appeals of the respondents and set aside the order of the Asstt. Collector holding that departmental authorities are required to entertain the applications on merits, so long as they are within the purview of the Section 11B of the Central Excise Act and they are not empowered to go into the question of unjust enrichment. In some of the cases, where the Asstt. Collector has granted refund within the time limit on the basis of the applications filed within the purview of the Section 11B, the department had gone

before Collector (Appeals) on the ground of unjust enrichment and these appeals filed by the Department have been rejected by the Collector (Appeals). In all these cases, the issue involved is whether the departmental authorities are competent to refuse refund on the ground of enrichment, notwithstanding the fact that the refund claims have been filed within the purview of Section 11B of the Central Excise Act, 1944.

2. Shri C.P. Arya, Ld. SDR moving the applications cited a number of judgments and pleaded that in all these cases, if the refunds are sanctioned, it will only go to enrich the respondents. The High Courts have held in the following decisions that where the refund claims result in unjust enrichment to the assessee, that can be denied. He particularly relied on the judgment of the Bombay High Court in Roplas case and also in the case of M/s. New India. He pleaded that judgment in the case of Roplas is based on a number of case laws as indicated below: Orient Paper Mills Ltd. v. State of Orissa 7. Sales Tax Officer, Banaras v. Kanhaiyalal Mukandlal Saraf .U.P. State Electricity Board, Lucknow v. City Board, Mussoorie-.State of Madhya Pradesh v. Bhailal Bhai 3. He, therefore, pleaded that in view of the aforesaid judicial pronouncements of the High Courts, the respondents are not entitled to the grant of refund. If the directions of the Collector (Appeals) are implemented, it will result in undue and unjust enrichment to the respondents to which they are not entitled as per the above citations.

He, therefore, sought for stay of operation of the orders of Collector (Appeals).

4. After hearing Sh. Arya, Ld. SDR, we find that the issue involved has already been elaborately gone into by the Tribunal in the case of M/s.

Anand Metal Works which was also followed by this Bench in the case of Zaver Industries and others in Order Nos.

117-119/90, dated 22.6.1990. We hold that the departmental authorities functioning under the statute cannot refuse to grant the refund on the ground of unjust enrichment and they have no powers to do that. The citations made by the Ld. SDR relate to the exercise of extra-ordinary powers by the High Courts, while dealing with the writ petition filed before them. Not even a single judgment has

been cited by Shri Arya, Ld. SDR to show that the departmental authorities functioning under the statute can exercise such powers of refusal to grant refund on the ground of unjust enrichment, even though the claims are within the purview of Section 11B. In the circumstances, we have no reasons to differ from the stand already taken by us. In view of this position, we find that the appeals themselves can be decided, since the issue involved for both the appeals as well as stay applications remain the same, namely whether the departmental authorities could refuse to grant refund on the ground of unjust enrichment. Since this issue has already been decided by this Bench, we proceed to decide the appeals themselves in the light of the ratio of decision already taken. We dismiss both the stay applications as well as appeals.

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