Fusebase Eltoto Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-09-1991

Reported in : (1991)LC456Tri(Delhi)

Appellant : Fusebase Eltoto Ltd.

Respondent : Collector of Central Excise

Judgement :
1. The present Miscellaneous Application emerges from Tribunal's Order Nos. 34-36/90-B1 dated 5th March, 1990. The Miscellaneous Application was received in the Registry on the 7th day of January, 1991. The Miscellaneous Application is supported by an affidavit sworn before a Notary Public. In response to the Miscellaneous Application filed by the applicants, the notice of hearing dated 22nd January, 1991 was sent by Registered AD Post to the applicants, listing the miscellaneous application for hearing on 5lh March, 1991. Shri R.M. Ram-chandani, the learned SDR had appeared on behalf of the respondents and the learned SDR had stated that he had no information in this regard whether the refund has been paid or not and the Bench had directed Shri Ramchandani, the learned SDR to gel the report from the Collector and file copy thereof in the Tribunal with a copy to the other side on the next date of hearing and the matter was adjourned to 24th April, 1991.

When the matter was again called on 24th April, 1991, Shri Ramchandani, the learned SDR requested for a fortnight's time for implementing the order passed by the Tribunal and he had produced a copy of the telex sent to the Collector and after hearing both the sides the Tribunal had passed a Miscellaneous Order No. E/104/91-B1 dated 24th April, 1991 and the Tribunal had mentioned in the order that the Tribunal will appreciate that the order be implemented before the next date of hearing viz., today and grant necessary refund to the applicants. The matter was called today. Shri V. Lakshmi Kumaran, the learned Advocate had appeared on behalf of the applicants. Shri Lakshmi Kumaran stated that on 3rd May, 1991 the applicants had filed a letter in the Office of the Assistant Collector of Central Excise, Noida with a copy of the Miscellaneous Order passed by the Tribunal and till date no action has been taken. Shri Lakshmi Kumaran pleaded that the amount involved is Rs. 50,36,744/-. As a consequential effect of the order passed by the Tribunal, he pleaded that the applicants are passing through great financial difficulty and the applicants are in great need of this amount. Shri Lakshmi Kumaran, the learned Advocate drew the attention of the Bench to internal page 3 of the Miscellaneous Application, where it has been duly mentioned that the applicants, after receiving the Order No. 34-36/91-B1 dated 5th March, 1990 had written to the Assistant Collector to give consequential effect to order, vide letters dated 15-6-1990, 1-9-1990, and 12-12-1990. Shri Lakshmi Kumaran argued that it appears that the revenue authorities arc not interested in implementing the order passed by the Tribunal. During the course of the arguments, he also drew the attention of the Bench to the fact that in the present matter, there is no unjust enrichment. The applicants had paid the amount from their small meagre resources. He further pleaded that since there is no provision of grant of interest in the Act, the applicants are suffering great losses. The applicants are to pay interest on borrowed capital and no interest is being paid on refund due amount. He also cited the judgment of the Bombay High Court in the case of Caprihans India Ltd. v. Union of India, 1991 (51) ELT 249 (Bom.), where the Division Bench of the Bombay High Court had held that where the Tribunal had passed an order, the lower authorities are bound to follow and act upon the same, even if there is unjust enrichment. He further argued that necessary direction may be given to the Collector to implement the order by a particular date. He has pleaded for acceptance of the Miscellaneous Application.

2. Shri M.S. Arora, the learned JDR stated that a telex was duly sent to the Collector on 24th April, 1990 expressing the displeasure of the Bench and in the

telex the SDR had requested the Collector to implement (he order passed by the Tribunal and a copy of the telex was also sent by post for confirmation and he stated that no reply has been received from the Collector.

3. We have heard both the sides and have gone through the facts and circumstances of the case. The Tribunal had passed the order on 5th March, 1990; now it is May, 1991 - almost 14 months have passed. During the arguments we were told that the amount of refund involved is Rs. 50,36,744. During the course of arguments we had enquired from the learned JDR whether any appeal has been filed before the Hon'ble Supreme Court against this order under Section 35L of the Central Excises & Salt Act, 1944. To this query from the Bench, Shri Arora, learned JDR stated that an appeal as well as a stay application has been filed. The appeal is filed and no stay order has been passed by the Supreme Court.

4. We had also enquired from Shri Arora, whether he had sent any reminder to the telex sent by the SDR to the Collector. To this, Shri Arora fairly stated that no reminder has been sent, as the time from 24th April to 9th May is a very short span.

5. Shri Lakshmi Kumaran, the learned Advocate in support of his arguments has referred to the judgment of the Bombay High Court in the case of Caprihans India Ltd. v. Union of India reported in 1991 (51) ELT 249 (Bom.); paras 4, 5 & 6 which are reproduced below, where the High Court has observed that it is not permissible for the authorities created under the Excise & Customs Act to deny relief of refund by resort to doctrine of unjust enrichment.

"4. Shri Talyarkhan, learned counsel appearing on behalf of the petitioners, submitted that the order of the Assistant Collector is entirely misconceived. The learned counsel urged that it was not open for the Assistant Collector to deny relief on the ground of unjust enrichment while exercising statutory powers under Central Excises and Salt Act. The learned counsel urged that the Central Excise law does not authorise denial of relief on the score of unjust enrichment nor does it make refund of duty conditional on the relief being passed on to the ultimate consumer. The submission of the learned counsel is correct and deserves acceptance. Indeed, Customs, Excise and Gold (Control) Appellate Tribunal in the decision reported in 1990 (47) ELT 610 (Tribunal) (Collector of Central Excise v. Weldekar Laminates Pvt. Ltd.) held that it is not permissible for the authorities created under Central Excise to deny relief of refund of the amount to the ultimate consumers and they are bound to grant refund without reference to the doctrine of unjust enrichment. The decision recorded by CEGAT which is final authority under the Act is binding on each and every officer exercising powers under Excise Act and the Assistant Collector in the present case could not ignore the judgment and refuse to grant refund.

"5. We must also point out that the Assistant Collector was entirely wrong in making reference to the decision in Roplas case and declining the relief. The doctrine of unjust enrichment is not available for the Assistant Collector and even otherwise the Roplas case judgment is no longer good law in view of the subsequent decision of the Full Bench of this Court reported in 1990 (46) ELT 23 (New India Industries Ltd. v. Union of India). We direct the Assistant Collector to ignore the decision in Roplas case while ascertaining whether the assessee is entitled to refund and strictly follow the decision of the CEGAT which is referred to hereinabove.

"6. Accordingly, petition succeeds and the impugned order passed by the Assistant Collector, Central Excise, Thane on April 27,1989 is set aside and the matter is remitted back to the Assistant Collector for fresh disposal in view of the decision recorded by CEGAT in 1990 (47) ELT 610. The Assistant Collector is directed to pass final order on the refund application and pay the refund amount on or before December 31, 1990. In the circumstances of the case, there will be no order as to costs." 6. In the matter before us, there is no unjust enrichment. In view of the above discussions we order the Collector to implement Tribunal's Order No. 34-36/90-B1 dated 5th March, 1990 on or before 23rd May, 1991 and report compliance to the Tribunal.

7. The matter to come up for mention on 27th May, 1.99.1, for disposal of this application finally. A copy of this order should be supplied Dasti.