C.C.E. Vs. Southern Petro Chemical Indus. Corpn. Ltd.

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SooperKanoon Citation : sooperkanoon.com/823250

Court : Chennai

Decided On : Oct-16-2000

Reported in : 2001(129)ELT38(Mad)

Judge : R. Jayasimha Babu and ;A.K. Rajan, JJ.

Acts : Central Excise Act, 1944 - Sections 27(1)

Appeal No. : Ref. Case No. 9 of 1997

Appellant : C.C.E.

Respondent : Southern Petro Chemical Indus. Corpn. Ltd.

Advocate for Def. : Nalini Chidambaram, Sr. Counsel for ;S. Silambannan, Adv.

Advocate for Pet/Ap. : K. Veeraraghavan, A.C.G.S.C.

Judgement :

R. Jayasimha Babu, J.

1. The question which has been referned to us viz., as to whether in the facts and circumstances of the case the Tribunal was correct in allowing the refund of duty paid by the respondent when they have not proved that the duty burden was not passed on to the customers, is required to be answered in favour of the Revenue, and against the respondent-manufacturer, in the light of the decision of the

Supreme Court in the case of Union of India v. Solar Pesticide Pvt. Ltd. - : 2000(116)ELT401(SC) .

2. The three Judge Bench of the Apex Court in that decision held at paragraph 17 thus :

'The use of the words 'incidence of such duty ....' is significant. The words 'incidence of such duty' mean the burden of duty Section 27(1) of the Act talks of the incidence of duty being passed on and not the duty as such being passed on to another person. To put it differently the expression 'incidence of such duty' in relation to its being passed on to another person would take it within its ambit not only the passing of the duty directly to another person but also cases where it is passed on indirectly. This would be a case where the duty paid on raw material is added to the price of the finished goods which are sold in which case the burden or the incidence of the duty on the raw material would stand passed on to the purchaser of the finished product. It would follow from the above that when the whole or part of the duty which is incurred on the import of the raw material is passed on to another then an application for refund of such duty would not be allowed under Section 27(1) of the Act.'

3. The respondent in this had sought refund of duty paid on Chlorine which was consumed by it captively in the manufacture of Hydro Chloric Acid. The incidence of the duty paid on Chlorine had been passed on to others. It's claim for refund was, therefore, rightly rejected on the grant of unjust enrichment.