

**Delhi Bottling Co. Pvt. Ltd. Vs. Collector of Central Excise**

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

**Decided On :** May-03-1995

**Reported in :** (1995)(59)LC313Tri(Delhi)

**Judge :** S T K., G B Deva

**Appellant :** Delhi Bottling Co. Pvt. Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. M/s. Delhi Bottling Co. Pvt. Ltd. have filed this Miscellaneous Application stating the concluding observation contained in the order of this Bench (No. 59/95-D dated 16.2.1995) be substituted in the manner indicated by them. The particular observation which is sought to be submitted is as follows: Shri Mehta indicate at the conclusion of the hearing when we announced the operative part of this order that they would be able to establish the fact that they had not passed on the duty burden to their customer and hence they would be eligible for the refund claimed by them.

Shri Mehta indicate at the conclusion of the hearing when we announced the operative part of the order that they will be able to establish before the lower authorities the fact that the proviso of undue enrichment as embodied in Section 11B(2) of the Central Excises and Salt Act, 1944 are not attracted in their case and hence the appellants would be eligible for the refund claimed by them.

2. Shri D.N. Mehta who was the counsel who had argued their appeal was present on their behalf when the application was taken up. He referred to the findings given by the Bench in the order in question and submitted that the department's interests have been taken into account by the Tribunal in its order as it has been stated that the unjust enrichment angle has to be taken care of. In the circumstances the further observation about what he had stated at the conclusion of hearing is not necessary, particularly as what he had said have not been properly brought out. He submitted that his remarks were as actually mentioned in the present application and requested that the same be allowed and the substitution made as applied for.

3. Shri Mohan Lal, learned Departmental Representative opposed the request and stated that the Tribunal's order requires no modification.

4. We have considered the submissions. The observation in the order which is sought to be substituted is not the operative part of the order. It refers to the remarks made by Shri Mehta, learned Counsel while the operative portion of the order namely allowing the appeal by remand for de novo decision by the Assistant Collector in accordance with law was announced by us in the court after the hearing. It was based on our understanding of what Shri Mehta had remarked. The order had been prepared and signed by the two of us on 15.2.1995 and 16.2.1995 respectively after the hearing was concluded on 15.2.1995. We feel we have mentioned what we had heard and what we understood were the remarks made by the learned Counsel. The remarks now indicated as actually having been made by him are in general terms that they would be able to establish before the lower authorities that the proviso regarding undue enrichment is not attracted in their case. What we had referred to as the remarks made by Shri Mehta was that they would be able to establish the fact that they had not passed on the duty burden to their customers. This is a vital requirement for making the proviso in question not applicable to them. To advance the latter claim the former requirement is vital. Be that as it may, the order was prepared soon after the hearing, recalling the observations made. As, however, it is contended otherwise, we would like to close the controversy by deleting the sentence in question from our order. The sentence to be deleted is: Shri Mehta indicated at the conclusion of the hearing when we

announced the operative part of this order that they would be able to establish the fact that they had not passed on the duty burden to their customer and hence they would be eligible for the refund claimed by them.

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