

India Pistons Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-08-1996

Reported in : (1996)(63)LC570Tri(Chennai)

Judge : S Kalyanam, Vice-, G T V.P.

Appellant : India Pistons Ltd.

Respondent : Cce

Judgement :

1. Shri Krishna Srinivas, the learned Counsel, submitted that in all the above appeals the question that arises for consideration is with reference to appellants' eligibility to claim refund without being hit by the applicability of the doctrine of unjust enrichment in terms of amendment to Section 11B of the CESA, 1944, which came into operation on 20.9.1991. The learned Counsel submitted that in respect of appeal Nos. 15/94 & 64 to 68/95, the department while not rejecting the appellants' right to claim refund, without granting the refund sanctioned had credited the amount in the Consumers Welfare Fund in terms of Section 11B as amended. The burden that the incidence of the tax had not been passed on to the consumer has been cast on the appellants in terms of amended Section 11B. The learned Counsel submitted that while the appellants' claim to refund is not in controversy and as the issue is only with reference to applicability of the doctrine of unjust enrichment and its consequential impact on the actual grant of refund, Section 11B as amended cannot be made applicable retrospectively and amended Section itself would also be unconstitutional in view of Article 265 of the

Constitution of India and a challenge on grounds of constitutional vires has already been made, by way of writ in the Madras High Court by the appellants' and the writ petitions are pending. The learned Counsel submitted that the Tribunal on consideration of principles of broad and substantial justice can consider the appellants' eligibility to refund and pass orders.

2. Shri Arulsamy, the learned DR, submitted that the Tribunal being a creature of statute cannot traverse beyonds the confines of law and it is now fairly settled by the Supreme Court that Section 11B of the CESA as amended incorporating the principle of the applicability of the doctrine of unjust enrichment is operative retrospectively. The learned DR submitted that since the appellants have not established legally that the incidence of the tax has not been passed on to the consumers; even if they are otherwise eligible to the grant of refund in law the amount cannot be sanctioned to them in the light of the existing amended Section 11B.3. We have considered the submissions made before us. As rightly contended by the learned DR, the Tribunal being a creature of statute will have to function within the four corners of the law and cannot traverse beyond the confines of law even if justice of a situation warrants it. This position is no longer *res Integra* and is covered by the authoritative pronouncement of the Supreme Court in the case of *Miles India Ltd. v. Asstt. C.C.* reported in 1985 ECR 289 (SC) : ECR C 750 SC : ECR C Cus. 1094 SC : 1987 (30) ELT 641. Be that as it may, being a statutory Tribunal, we have no jurisdiction to go into the vires of a particular Section or enactment much less on its constitutional validity. Section 11B was amended on 20.9.1991 and it is now well settled that the amended Section is operative retrospectively in respect of the pending refund claims. Therefore, in the above cases, inasmuch as the refund amount has not been actually given to the appellants; unless the appellants prove that they had not passed on the incidence of taxation to the consumers, they would not be eligible to the grant of the same in the light of Section 11B of the Act as amended. We take note of the fact that appellants' have also moved the High Court by way of a writ questioning the vires of amended Section 11B of the Act relating to the applicability of the doctrine of unjust enrichment and it would be open to the appellants to take recourse by way of writ before the High Court if they so desire in the above appeals as well. In this view of the matter, the appeals are dismissed.

