(1997) 01 SC CK 0141

In the Supreme Court Of India

Case No : Civil Appeals Nos. 6603-10 Of 1995

Collector of Customs and Central Excise, Meerut — APPELLANT

Vs

Citurgia Biochemicals Ltd. — RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Citation : (1998) 101 ELT 568 : (1997) 11 SCC 178

Hon'ble Judges : K. Venkataswami, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. In this case, the refund claim was made for the period March 1, 1975 to January 31, 1985. The refund application was filed on May 15, 1986. The Assistant Collector rejected the refund application on two grounds, viz., (i) since the payment was not under protest, the application was barred by time and (ii) unjust enrichment. On appeal, the Appellate Collector affirmed the order of the Assistant Collector on the ground of limitation. He did not think it necessary to go into the question of unjust enrichment. On further appeal, however, the Tribunal held that in view of the letter dated July 18, 1981, the payment of duty on or after July 18, 1981 should be deemed "under protest". So far as the anterior period is concerned, the matter was remanded to the original authority to determine whether the payment of duty during the period March 1, 1975 to February 11, 1980 was under protest or not. In other words, an opportunity was given to the assessee to establish that even for the said period March 1, 1975 to February 11, 1980, the payment of duty was "under protest". We may mention here that so far as the period February 11, 1980 to July 18, 1981 is concerned, it is obvious from the record that the payment was not under protest. We see no reason to differ from the order of the Tribunal with respect to its finding that the payment on or after July 18, 1981 was under protest and also with its order remanding the matter for the period March 1, 1975 to February 11, 1980 for the aforesaid purpose. In the light of the above, the appeals are disposed of with the

following directions :

(i) So far as the period July 18, 1981 to January 31, 1985 is concerned, it must be held that it is not barred by limitation. But the refund claim shall be dealt with in accordance with the law declared in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, read with Clause (6) of the format order, which reads as follows :

Where a refund application or an appeal is preferred under and in accordance with the directions (1), (2), (3) and (4) above, the same shall be entertained only if the applicant for refund/appellant files affidavit stating that he has not passed on the burden of the duty, which is claimed by way of refund, to another person. In case the applicant for refund is a company or a society, the affidavit shall be sworn by the Managing Director or the Principal Officer of the Company or the Society, as the case may be. Such an affidavit shall be treated as an averment/assertion which an applicant for refund has to make in terms of the judgment in Mafatlal.

(ii) So far as the period of March 1, 1975 to February 11, 1980 is concerned, the original authority shall first determine whether the payment of duty was under protest. Depending upon the finding recorded in that behalf, the matter shall be governed by the law laid down in Mafatlal and in case it is found that the payment is under protest, it will be governed by the decision in Mafatlal read with Clause (6) of the format order.

(iii) So far as the period February 11, 1980 to July 18, 1981 is concerned, the claim for refund is rejected.

2. The appeals are disposed of in the above terms. No costs.

