
(2015) 09 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 580 Of 2010

M/s. Poddar Pigments Ltd.

APPELLANT

Vs

C.C.E., Jaipur-I

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Customs Act, 1962 — Section 18

Central Excise Act, 1944 — Section 11B

Citation : (2015) 09 CESTAT CK 0006

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Jatin Mahajan, Rakesh Khanna

Final Decision : Dismissed

Judgement

1. Appeal rs filed against Order-in-Appeal dated 03.08.2010 which upheld the Order-in-Original dated 05.09.2009 in terms of which out of the refund

claim of the appellant amounting to Rs1,11,823/-, Rs.18,378/- was not found to be admissible and the remaining amount of Rs.93,445/- was ordered to

be credited to the Consumer Welfare Fund on account of the doctrine of unjust enrichment. The appellant is in appeal against the Order-in-Appeal to

the extent it did not grant it refund of Rs.93,445/- and instead upheld the credit thereof in the Consumer Welfare Fund.

2. When the case was called for personal hearing, no one appeared nor was any request received for adjournment. Therefore, we proceed to decide

the appeal on merits. Appellant in its Memorandum of Appeal has essentially contended that the Asst. Commissioner of Customs initially assessed the

goods provisionally and the provisional assessment was finalised vide Order-in-Original No.7/2006 dated 20.10.2006. The provisional assessment was

made on 25.10.2005 and 11.07.2006 which was well before the amendment in section 18 of the Customs Act, 1962 incorporating the doctrine of unjust

enrichment as the said amendment was w.e.f. 13.07.2006 and therefore the principles of unjust enrichment were not applicable with regard to refund

arising out of finalisation of provisional assessment. It also stated that the goods on which the refund was claimed were inputs and the price of the

finished goods was reduced subsequent to the import of raw material which should be taken to mean that the burden was not passed on to the buyer-

customers. It cited a few judicial pronouncements none of which were of the Supreme Court.

3. Ld. Departmental Representative, on the other hand, stated that regardless of the said amendment to section 18 *ibid*, the doctrine of unjust

enrichment became law of the land in the light of the judgement of Supreme Court in the case of *Mafatlal Industries Ltd. Vs. Union of India* [1997

(89) EL T 247 (SC)]. It also cited the judgement of Supreme Court in the case of *CCE Vs. Allied Photographic India Ltd.* [2004 (166) EL T 3 (SC),]

wherein it was held that even for refund claim made after finalisation of assessment, Section 11B of Central Excise Act, 1944 is required to be

complied with in terms of para 104 of the Supreme Court judgement in the case of *Mafatlal Industries Ltd. Vs. Union of India* (*supra*). It also stated

that the doctrine of unjust enrichment is applicable even in the case of captive consumption of raw material as was held in the case of *Union of India*

Vs. Solar Pesticides Pvt. Ltd. [2000 (116) ELT 401 (SC)].

4. We have considered the facts of the case. It is not in dispute with the doctrine of unjust enrichment propounded by Hon'ble Supreme Court in the

case of *Mafatlal Industries Ltd. Vs. Union of India* (*supra*) became law of the land on the date the said judgement was pronounced. The ratio of the

judgement of Supreme Court in the case of *Commissioner of CCE Vs. Allied Photographic India Ltd.* (*supra*) wherein it was stated that the said

doctrine is applicable even in case of finalisation of provisional assessment is applicable to the present case too. The appellant cited several

judgements like in the cases of *CC, Kandla Vs. Hindustan Zinc Ltd.* [2009 (235) EL T 629 (Tri-LB)], *CC Vs. Hindalco Industries Ltd.* [2008 (231)

EL T 36 (Guj)] and *Hindustan Petroleum Corporation Ltd Vs. CC, Chennai* [2009 (242) EL T 228 (Tri-Chennai)]. None of the judgements cited by

the appellant are of the Supreme Court while the aforesaid analysis is supported by the pronouncement of the Hon'ble Supreme Court in the case of

CCE Vs. Allied Photographic India Ltd. (supra). Even in the case of CC Vs. Hindalco Industries Ltd. (supra) the Gujarat High Court only stated that

no provision existed in section 18 of the Customs Act, 1962 which would permit Revenue to invoke principles of unjust enrichment in relation to duty

paid in excess, found to be so, upon finalisation of provisional assessment under section 18 ibid. While that was certainly the case, (i.e., Section 18 ibid

did not expressly contain provision regarding unjust enrichment) the invocation of doctrine of unjust enrichment does not require the crutches of any

section of any Act in the light of the fact that the said doctrine was required to be invoked in all cases involving refund of duty in the wake of the

judgement of Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union of India (supra) which laid down the principles of unjust

enrichment as law of the land.

5. That the doctrine of unjust enrichment is applicable even in respect of raw materials to be consumed it, is settled by Supreme Court in the case of

Union of India Vs. Solar Pesticides Pvt. Ltd. (supra). It is not in dispute that the burden to establish that the burden of duty has not been passed on to

any other person squarely rests on the appellant. That burden cannot be deemed to have been discharged merely by saying that the price of the final

products reduced after the import of the impugned goods because the price of the final product does not depend solely on the price of the impugned

goods. Supreme Court in the case of CCE Vs. Allied Photographic India Ltd. (supra) has also supported this view as is evident from its observation

quoted below:-

..... Uniformity in price before and after the assessment does not lead to the inevitable conclusion that incidence of duty has not been

passed on to the buyer as such uniformity may be due to various factors ...

6. In the light of the aforesaid analysis, we do not find any infirmity in the impugned order. Appeal is accordingly dismissed.