

(1999) 11 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal No. 6623 Of 1999

Union of India (UOI) and Another

APPELLANT

Vs

Raj Industries and Another

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Citation : AIR 2000 SC 3500 : (2000) AIRSCW 2423 : (2000) 120 ELT 50 : (2000) 2 SCC 172

Hon'ble Judges : S. B. Majmudar, J;D. P. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Delay condoned.
2. Leave granted.
3. We have heard learned Counsel for the parties finally in this appeal.
4. The short question is whether the order of the Division Bench of the High Court confirming the order of the learned Single Judge directing refund of customs duty on consignments of certain goods imported by the respondent-firm between 1978 and 1980, was justified in law or not.
5. The learned Single Judge upheld the claim of the respondent and set aside the order of the Assistant Collector of Customs dismissing the refund application of the respondent as barred by limitation and allowed the same. The Division Bench of the High Court confirmed the said decision of the learned Single Judge, by the impugned judgment.
6. So far as the merits of the order of the Division Bench of the High Court regarding liability of the Department to refund the import duty collected in excess are concerned, the respondents' case is fully covered by a decision of this Court in the case of Collector of Customs v. K. Mohan & Co. Exports . The Division Bench of the High Court rightly held that on merits the order of the

learned Single Judge ordering refund of the import duty collected in excess was justified, in the light of relevant exemption notifications. Thus on merits no fault can be found with the decision of the High Court impugned in this appeal. It will stand confirmed.

7. However, the further question remains whether in the meantime the amount of duty collected in excess, which is already refunded to the respondent-firm pursuant to the impugned order of the High Court can be retained by it or not on the principle of unjust enrichment. Thus this limited question now survives for consideration.

8. In support of this contention learned Counsel for the appellants referred to a Constitution Bench decision of this Court in the case of *Mafatlal Industries Ltd. and Ors. v. Union of India and Ors.* Learned Counsel for the respondents, on the other hand, submitted that the format order framed by this Court pursuant to the aforesaid decision does not cover this controversy. He strongly relied upon the format order at page 2 of the paper book which mentions that proceedings for examining this aspect would survive in contingencies referred to therein. We may not go into this wider question for the simple reason that in the light of the aforesaid Constitution Bench decision of this Court it is well settled that where a claim for refund of any duty or tax paid arises for consideration of the authorities apart from the merits of the claim and even if on merits it is found to be a justified claim, the principles of unjust enrichment has also to be kept in view before directing the refund. It is no doubt true that the respondent-firm while importing the concerned consignments did pay the disputed import duty but when it raised the claim for refund it was entitled to point out that the duty collected in excess was not justified in law. But even if that was so found as ultimately seen in the present appeal, further question would still survive whether the refund could have been ordered to the respondents by the impugned order if the burden of duty was already passed on to the purchasers from the respondents. As that has not been examined by the High Court the decision of the learned Single Judge directing refund of the whole amount and as confirmed by the Division Bench requires to be set aside only on this limited ground. Thus, while upholding the plea of the respondents that the disputed import duty paid by it was not legally payable, still the question survives for consideration as to whether refund could have been ordered to it if the burden of duty was passed on to third parties. Only for deciding this limited question the proceedings will have to be remanded to the Assistant Collector from whose order the proceedings arose in writ petition before learned Single Judge and ultimately went before the Division Bench which disposed of the same by the impugned order.

9. Thus, the appeal is partly allowed. The order of learned Single Judge as confirmed by the Division Bench of the High Court in writ petition to the extent of directing refund of the amount of excess duty to the respondent-firm will stand set aside. Proceedings are remanded for the decision by the Assistant Collector

or Commissioner (Customs), as the case may be, for deciding the limited question whether the disputed amount of customs duty can be refunded to the respondent if it is found in the light of the evidence to be led by parties in the remanded proceedings whether the burden of the disputed duty was actually passed on to third parties or not. It is obvious that if it is found that the burden was not so passed on to third parties then the refund order would remain justified in law and the amount actually received by the respondent-firm pursuant to the impugned order can be retained by it. But if it is found that the burden was already passed on to the third parties then on the principle of unjust enrichment the refund application of the respondents will have to be dismissed and the respondent-firm will be required to return the concerned collected duty amount pursuant to the order of the High Court back to the Department.

10. It is made clear that the remanded proceedings will be decided on merits without going into the question of limitation regarding application for refund. It is obvious that the question of the respondent-firm if at all being required to return collected amount of the disputed duty to the Department will abide by the result of the remanded proceedings.

11. The Civil Appeal is accordingly allowed to the aforesaid extent with no order as to costs.