(1994) 07 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Special Appeal No. 128/94

Union of India (UOI) APPELLANT

Vs

Adarsh Metals Corporation RESPONDENT

Date of Decision : 12-07-1994

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 12

Citation : (1994) 74 ELT 821 : (1994) 2 RLW 359 : (1994) 2 WLC 707 : (1994) 2 WLN 78

Hon'ble Judges : Gokal Chand Mital, C.J;N.K. Jain, J

Bench : Division Bench

Advocate : S.S. Lal, for P.P. Choudhary, for the Appellant; B.C. Mehta, for the Respondent

Judgement

Gokal Chand Mital, C.J.—On our direction, Mr. B.C. Mehta accepts notice who had appeared before the learned Single Judge. Counsel are prepared to argue for disposal of the matter today.

2. The merits of the controversy regarding levy of excise duty decided by the learned Single Judge is not challenged by the counsel for the Union of India before us. He urges that after the amendment of Section 11B of the Central Excises & Salt Act, 1944 even if there was an order of refund, the writ petitioner was not entitled to refund because Section 11B was retrospective and unless he proves to the satisfaction of the Assistant Collector, Central Excise that he had passed on the incidence of excise duty to the buyer. In support of the arguments, he placed reliance on two decisions of the Supreme Court, one, Union of India and others Vs. Jain Spinners Ltd. and another, and the other Union of India and others Vs. I.T.C. Limited, whereby it has been clearly held that Section 11B is retrospective and the refund claimed in respect of period prior to 20th September, 1991, when Section 11B was amended, would also not be allowed unless the writ petitioner proves to the satisfaction of the Assistant Collector, Central Excise that he has passed on the incidence of excise duty to the

purchaser.

3. In this view of the matter, he urges that learned Single Judge was in error in holding that Section 11B is prospective. The learned Single Judge has followed the decision of the Calcutta High Court wherein it has been held that it is only prospective. In the aforesaid referred cases, the Supreme Court has over-ruled the Calcutta decision and has held that provision is retrospective.

4. Accordingly, we set aside the decision of the learned Single Judge with regard to the retrospectivity of Section 11B of the Act and hold that the provision is retrospective. Accordingly, while upholding the judgment of the learned Single Judge that recovery of the excise duty was illegal, the question of refund is left open to be gone into by the Assistant Collector, Central Excise so that the writ petitioner is able to prove before him that he has passed on the incidence of customs duty to the buyer. The Assistant Collector, Central Excise will decide the matter in accordance with Section 11B, Section 12 as amended and aforesaid referred decisions of the Supreme Court.

5. Accordingly, the appeal is disposed of in the terms referred to above.

