(2000) 01 GAU CK 0024

Gauhati High Court

Case No: None

Jayshree Tea and Industries Ltd.; National Plywood Industries Ltd.		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision: Jan. 1, 2000

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11B(2), 11B(2)

Citation: (2000) 2 GLJ 321

Hon'ble Judges: Brijesh Kumar, C.J. and D.N.Chowdhury, J

Bench: Division Bench

Advocate: R.Gogoi, M.Hazarika , K.K.Mahanta, Advocates appearing for Parties

Judgement

D. N. Chowdhury, J.

The only question calling for adjudication in these appeals is as to whether the realisation of excise duty on captive consumption of aqueous solution in the shape of phenol or urea formal in or formaldehyde is permissible under the law. The appellants in terms of the Demand Notice paid excise duty on UF solution and PF solution manufactured by their companies and captively used as glue compounds in the said factory for manufacture of plywood. As per the Schedule of the Act and on the basis of the classification the claim for refund were rejected for the period from 1.10.77 to 15.9.82 and assessment so finalised was the subject matter in the Civil Rule No. 343 of 1992 preferred by one of the appellants, Jayshree Tea and Industries Ltd. The learned Single Judge upon hearing the parties and considering the materials on record held that the UF and PF solutions manufactured and captively consumed by the petitioner company were nondutiable items and accordingly answered the issue in question in favour of the appellants on the ground that if such refund is allowed it would amount to unjust enrichment.'' Hence this appeal.

Writ Appeal Nos 144 of 1997 and 46 of 1997 have arisen out of the judgment dated 1.12.95 passed in Civil Rule No. 4364 of 1991 and Civil Rule No. 4307 of 1991 respectively. The learned Single Judge disposed of the above two writ petitions relying upon the decision rendered by the learned Single Judge in Civil Rule No. 343 of 1992.

2. Mr. Ranjan Gogoi, the learned senior counsel appearing on behalf of one of the appellants challenged the judgment of the learned Single Judge and contended the doctrine of unjust enrichment is not applicable so far the captive consumption are concerned. The learned senior counsel referred to the process of manufacturing items and submitted that in the process of manufacturing items, UF solution and PF solution are captively used as glue compounds for manufacturing of plywood. It is required only as an input for the manufacture of process and not used for any other purposes. The solutions in questions are not marketable goods and are neither sold in the market or the same are capable of being so sold due to short self life of about 2448 hours of solution in question and therefore the same are not excisable goods. The doctrine of unjust enrichment cannot be made applicable in the case in hand where the material is captive used for the manufacture of plywood. The learned senior counsel in support of his contention referred to a number of decisions of the Custom Excise and Gold (Control) as well as decision of the Supreme Court reported in HMM Ltd & another vs. Administrator, Bangalore City Corporation reported in AIR 1990 SC 47. The learned senior counsel lastly referred to the decision of the Bombay High Court in Solar Pesticide Pvt Ltd vs. Union of India reported in 1992 (57) ELT 201 (Bom). Mr. Gogoi, learned senior counsel relying upon the aforesaid judgment referred to the provision of the Central Excise and Customs Law (Amendment) Act,'' 1991 visavis Customs Act, 1962 as amended. The learned counsel pointed out that the scheme of the amended Act envisages, a direct transfer of the burden of duty along with the sale of the same goods which were, used in the manufacturing. The doctrine of unjust enrichment which is the genesis of the amendment has no application in such cases.
Ms: M. Hazarika, learned counsel for the other two appeals adopted the argument of Mr. Gogoi, learned senior counsel but also pointed to the factual matrix of her cases.

Mr. KK Mahanta, learned Senior CGSC has however submitted that the issue is no longer res integra, in view of the decision of the Supreme Court in Solar Pesticides Pvt Ltd vs. Union of India reported in (2000) 2 SCC 705. Mr. Mahanta, learned Senior CGSC submitted that as per the decision of the Supreme Court in the above case the ratio of die decision in Mafatlal Industries Ltd & others vs. Union of India & others, reported in (1997) 5 SCC 536 the principles unjust enrichment would be equally applicable in the case of captive consumption, the Supreme Court in Mafatlal (supra) did not go into the issue as to question of unjust enrichment could not be equally applicable in case of captive consumption but in the later decision the Supreme

Court resolved that doubt by holding that observation made in Mafatlal (supra) in paragraph 108 of the said judgment could be equally applicable in case of captive consumption to claim refund of duties as well in the above case the Supreme Court quoted the observation of the Supreme Court made in paragraph 108 from the SCC and thereafter observed at paragraph 20 in Solar Pesticide (supra) that the observations made at para 20 in Mafatlal case (supra) would be equally applicable in the case of captive consumption as well. In the circumstances the decision of the learned Single Judge cannot be faulted, the appeals are therefore liable to be dismissed which we hereby do.

Mr. Gogoi, learned senior counsel appearing on behalf of the Writ Appeal No.211 of 1996 submitted that in the light of the observation made by the Supreme Court in Solar Pesticide a direction may be issued to the Assistant Collector to decide the appeal afresh on the question as to whether in the in stant case the duty of article manufactured has been passed on the any other person.

Mr. KK Mahanta, learned Senior CGSC however, submitted that there is already a decision on this issue by the Assistant Collector and that issue is not challenged by the writ petitioner and question of giving such direction is not arise. It appears that appellants in this case also challenged the legality and validity of the order of the Assistant Collector, including the finding of the Assistant Collector regarding passing over the tax burden. The learned Single Judge however, did not go into that issue directly, in the circumstances, we are of the view that it would be open for the appellant of WA No.211 of 1996 to make such application and if such application is made, it would be examined as per law and it would be open for the respondents to raise all such pleas that would be available questioning the maintainability of such petition including the question of limitation! Ms. M. Hazarika, learned counsel however submitted that her refund applications are yet to be disposed of which should be disposed of by the Assistant Collector and decide those as per law expeditiously subject to the observations made above.

The writ appeals stands dismissed.