

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 12/10/2015

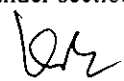
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/53046/2015-CU[DB] dated 02/09/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.


Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/580/2010	PODDAR PIGMENTS LIMITED. E-10,11 F-14 TO 16, RIICO INDUSTRIAL AREA, SITAPUR, JAIPUR.
		Name and Address of Respondent
2		-C.C.E. JAIPUR I N.C.R.Building, Statue Circle, "C" Scheme, jaipur 302005.

Copy To
3 Advocate(s) / Consultant(s):

**JATIN MAHAJAN
ADVOCATE
157, 3RD FLOOR VINOBH
PURI LAJPAT NAGAR
PART-II NEW DELH
110024**

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38

14 The ICAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

15 C.D.R. 16 Office Copy 17 Guard File


Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.**

Date of Hearing 02.09.2015

For Approval & Signature :

**Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.C/580/2010-CU[DB]

[Arising out of Order-in-Appeal No.20(DKV)Cus/JPR-I/2010, dated 03.08.2010 passed by the C.C.E.&S.T.(Appeals), Jaipur-I]

M/s. Poddar Pigments Ltd.

Appellant

Vs.

C.C.E., Jaipur-I

Respondent

Appearance

Mr. Jatin Mahajan, Advocate

- for the appellant

Mr. Rakesh Khanna, DR

- for the respondent

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**CORAM: Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

Final Order No. 53046/2015, dated 02.09.2015

Per Mr. R.K. Singh :

Appeal is 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) ELT 247 (SC)]***. It also cited the judgement of Supreme Court in the case of ***CCE Vs. Allied Photographic India Ltd. [2004 (166) ELT 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

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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) ELT 629 (Tri-LB)]***, ***CC Vs. Hindalco Industries Ltd. [2008 (231) ELT 36 (Guj)]*** and ***Hindustan Petroleum Corporation Ltd Vs. CC, Chennai [2009 (242) ELT 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.

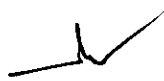
5. That the doctrine of unjust enrichment is applicable even in respect of raw materials to be consumed ^{is} it, settled by Supreme Court in the case of **Union of India Vs. Solar Pesticides Pvt. Ltd.** (supra). It is not in dispute that the burden to establish that the burden of duty has not been

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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.


(Justice G. Raghuram)
President


(R.K. Singh)
Member (Technical)