

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

Appeal No. E/2758/00/NB(SM)

BENCH - NB(SM)

Dated 20/2/2001

CEGAT
NEW DELHI
To,

CCE Indore

In the matter of :

CCE Indore

Appellant

vs.

M/s Kores (I) Ltd

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/290/01/NB(SM)
Dated : 15/2/2001 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

BU
Asstt. Registrar
NB(SM)

1. M/s Kores (I) Ltd
(Bm 9 SD) Pithampur,
DNH - Dhar (MP)
2. CCE/CE (Appeal) Bhopal
3. Chief Commissioner of Central Excise / Customs. Indore
4. Adv. / Consult.
5. S.D.R - NB(SM)
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
14. Office Copy
15. Con - Cms

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Asstt. Registrar NB(SM)

CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

Appeal No. E/2758/00/NB(SM)

(Arising out of Order-in-Appeal No. 1380-CE/BPL/99 dated 11.11.99 passed by Commissioner (Appeals), Customs & Central Excise, Bhopal)

C.C.E. Indore .. Appellants
(Rep. by Shri A.K. Jain, JDR)

vs.

M/s. Kores (I) Ltd. .. Respondents
(Rep. by None)

FINAL Order No. A/290/01/NB (S/W) dt: 14.2.2001

Per K.K. Bhatia, Member (T):

The appellants filed a refund claim for Rs.15,409/- with the Asst. Commissioner of Central Excise and Customs, Division-II, Indore on the ground that the consumables of the Photo Copying Machine imported by them were subjected to at higher rate of duty and cleared by them under the Bill of Entry No.233/96-97 dt. 26.7.96. The Asst. Commissioner on scrutiny of the claim of the party vide his Order dt. 13.11.96 held that the refund amount claimed by them was admissible on merits, but, he however, observed that the assessee had not submitted any documentary evidence to show that the burden of Customs duty paid in excess claimed as refund had not been passed on to the customers of the final product and that their refund claim was consequently covered under doctrine of unjust enrichment. Accordingly, he sanctioned the refund claim on merits, but directed that this amount to be credited to the Consumer Welfare Fund under Section 28B of Customs Act, 1962.

2. The Respondents filed an appeal and the Commissioner (Appeals), Bhopal vide his Order dt. 11.11.99 held that the provisions of Section 28B of the Customs Act, 1962 are not attracted in this case, as the imported goods were 'inputs' which were used captively in the manufacture of final product. He held that it is a certain law in the case of captive consumption that there is no liability on the appellants to establish that the incidence of duty was not passed on to the buyer of the goods. He, accordingly, held that the respondents (appellants before him) were entitled to the refund of the amount claimed by them and allowed their appeal with consequential relief.

3. The present appeal is by the Revenue against the above order of Commissioner (Appeals). I have heard Shri A.K. Jain, JDR for the appellants. The respondents are not represented despite the notice. The Revenue in their appeal have relied on the decision of the Hon'ble Supreme Court in the case of Union of India vs. Solar Pesticide (P) Ltd. [2000 (116) ELT 401 (S.C)]. In this judgement, it is observed that the use of the words 'incidence of such duty' is significant. The words 'incidence of such duty' mean the burden of duty. Section 27(1) of Customs Act, 1962 talks of the incidence of duty being passed on and not the duty as such being passed on to another person. To put it differently, the expression 'incidence of such duty' in relation to its being passed on to another person would take within its ambit not only the passing of the duty directly to another person but also cases where it is passed on indirectly.....'. It

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would follow from the above that when the whole or part of the duty which is incurred on the import of raw material is passed on to another person, then application for refund of such duty would not be allowed under Section 27(1) of the Act.

4. In the present case, the lower appellate authority has allowed the refund amount to the respondents only on the ground that the imported goods in respect of which the claim of refund is made were captively consumed and the bar of unjust enrichment is not applicable in respect of the goods consumed captively. These findings by the lower appellate authority are in direct conflict with the ratio of the judgement of Apex Court as cited above. There is no other point for consideration. Therefore, following the ratio of the aforestated judgement of the Hon'ble Supreme Court, the appeal is allowed.

(Announced and dictated in the Court)

(K.K. Bhatia)
Member (Technical)

MS.
15.2.01