

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Nos. 1364-1365 of 2001

Commissioner of Central Excise,
Lucknow

Appellant (s)

Versus

M/s. Kesar Enterprises Ltd. & Anr.

Respondent (s)

(with office report)

Date: 22/03/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE LOKSHWAR SINGH PANTA

For Appellant(s) Mr. Harish Chandra, Sr. Adv.
Mr. Mohit Chaudhary, Adv.
Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. A.K. Ganguli, Sr. Adv.
Mr. Vinay Garg, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed leaving the parties to bear their own costs.

(J.S. Rawat)
AR-cum-PS

(Kanwal Singh)
Court Master

[Signed order is placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 1364-1365 of 2001

Commissioner of Central Excise,
Lucknow

Appellant (s)

Versus

M/s. Kesar Enterprises Ltd. & Anr.

Respondent (s)

O R D E R

These appeals are statutory appeals filed under Section 35-L(b) of the Central Excise Act, 1944 (for short "the Act") , impugning final Order No. 219-220/2000-D dated 29th June, 2000 passed by a Full Bench (three-Judge Bench) of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short "the Tribunal") by which the Full Bench resolved the conflict of views expressed by two Benches of co-ordinate jurisdiction, (i) in the case of Sahakari Khand Udyog v. C.C.E., Surat [1999 (33) RLT 767] and (ii) National Cooperative Sugar Mills Ltd. v. C.C.E., Madurai [1999 (33) RLT 978]. While in the former decision, the Bench took the view that rebate allowable to manufacturers of sugar as per Notification No. 108/78 comes under the provisions contained in Section 11B of the Act and is hit by the principle of "unjust enrichment", in the latter decision, another Bench of the Tribunal has taken the view that the incentive provided to manufacturers of sugar under Notification No. 237/87 (which is the successor notification to Notification No. 108/78) is in the nature of subsidy falling outside the purview of "unjust enrichment" and hence not falling under Section 11B of the Act.

The Full Bench of the Tribunal agreeing with the view in the latter case, i.e., National Cooperative Sugar Mills Ltd. v. C.C.E., Madurai [1999

(33) RLT 978], overruled the decision in the former case, i.e., Sahakari Khand Udyog v. C.C.E., Surat [1999 (33) RLT 767].

Against the decision rendered in the former case, i.e., Sahakari Khand Udyog (supra), an appeal was filed which has been disposed of by a three-Judge Bench of this Court in Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs, [2005(3) SCC 738] whereby this Court has upheld the decision of the Tribunal to the effect that the assessee would not be entitled to the refund of the excess duty paid as the assessee had passed on the burden of the duty charged to the consumers; that the assessee would not be entitled to claim any amount by way of refund as the same results in "unjust enrichment" which cannot be permitted. The point in dispute being squarely covered by a three-Judge Bench of this Court in Sahakari Khand Udyog's case (supra), the order under appeal is set aside. The assessee would not be entitled to the refund of the excess amount of duty paid by it, in terms of the decision of this Court in Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs, (supra). The impugned order is set aside and the appeals are allowed leaving the parties to bear their own costs.

.....J.

.....
(ASHOK BHAN)

New Delhi;
.....J.
March 22, 2006.

.....
(LOKESHWAR SINGH PANTA)