

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4944 OF 2000

M/S. NATIONAL ENGINEERING INDUSTRIES

Appellant (s)

VERSUS

COMMNR. OF CENTRAL EXCISE, JAIPUR

Respondent(s)

(With office report )

Date: 14/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. S.K. Bagaria, Sr. Adv.

Ms. Meenakshi Arora, Adv.

Ms. Karuna Nandy, Adv.

Mr. Rahul Narayan, Adv.

For Respondent(s) Mr. A. Subba Rao, Adv.

Mr. P. Parmeswaran, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Civil Appeal is dismissed in terms of the signed order.

(K.K. Chawla)

(Jasbir Singh)

Court Master

Court Mas

ter

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4944 OF 2000

M/S. NATIONAL ENGINEERING INDUSTRIES

Appellant (s)

VERSUS

COMMNR. OF CENTRAL EXCISE, JAIPUR

Respondent(s)

O R D E R

This Appeal is against an order of the Customs,  
Excise and Gold (Control) Appellate Tribunal, New Delhi  
(in short "CEGAT") dated 29th March, 2000.

Briefly stated the facts are that the Appellants  
have been denied refund on the ground that there would  
be unjust enrichment. The law regarding unjust  
enrichment is settled by the Constitution Bench of this

Court in the case of Mafatlal Industries Ltd. v. Union

of India reported in 1997 (89) E.L.T. 247 (S.C.).

The period for which refund is claimed is from

1976-1977, 1977-1978 and 1978-1979. However, it appears

that there was a dispute between the Appellants and the

Respondent as to how the benefit under Notification

No.198/76-CE dated 16th June, 1976 was to be calculated.

This dispute was ultimately decided by CEGAT in favour

of the Appellants. The claim for refund had then to be

worked out. Pursuant to the decision of CEGAT, the

Appellant's claims for refund were taken up for

consideration in 1993. By that time Section 11-B had

been amended and the doctrine of unjust enrichment had

been incorporated in Section 11-B. Thus even though the

Appellant's refund claims were allowed, refund was not

granted to them on the ground that they had recovered

amounts from their purchasers. The amounts were directed

to be credited to the Fund instituted for that purpose.

It is submitted that the claim for refund is based

upon Notification No.198/76-CE dated 16th June, 1976. It

is submitted that under this Notification the benefit

could only become available at the end of the year as it

had to be worked out as to what was the base clearances

and the excess clearances. It was also submitted that

during that period Rule 173(I) did not contemplate any

refund but an automatic adjustment between  
the

Department and the Assessee, in the account of the

Assessee. It was submitted that under the  
se

circumstances the doctrine of unjust enrichment should

not be applied. It was submitted that the law prevalent

at that time should be applied. In support of this

submission reliance was placed upon the decision of this

Court in the case of M.R.F. Ltd. v. Collector of Central

Excise, Madras reported in 2004 (164) E.L.T. 383 (S.C.).

There can be no dispute with the proposition that

the law prevalent at the relevant time has to be

applied. It is on this very principle that the refund

has not been granted and question of grant of refund

arose actually only after the decisions of the CEGAT.

Till then there was a dispute as to the manner in which

the benefit was to be worked out. By the time the claim

for refund were taken up for consideration, Section 11-B

had already been amended. It now provided that where

the amounts had already been recovered from customers,

no refund could be made.

We, therefore, see no infirmity in the impugned

Judgment. We see no reason to interfere. The Civil

Appeal is dismissed.

.....J.

[S.N. VARIAVA]

.....J.

[TARUN CHATTERJEE]

New Delhi.

September 14, 2005.