Supreme Court of India
Collector Of Central Excise, ... vs Western India Plywood on 22 July, 1997
Equivalent citations: 1997 (92) ELT 7 SC, JT 1998 (4) SC 402, (1998) 1 SCC 316
Bench: J Verma, B Kirpal
ORDER

1. The only question raised for consideration in this appeal relates to the assessee/respondent's claim for refund of the amount of Rs. 7,18,671.55 out of the total amount of Rs. 12,54,827.05 paid as duty under Tariff Item No. 16-B in respect of flush doOrs. The question of classification of the goods does not survive for consideration at this stage. On nine applications for refund made by the assessee, the Assistant Collector by an order dated 1-6-1982 directed refund of the total amount of Rs. 5,36,155.50 after deducting the amount of Rs. 7,18,671.55 which was claimed by the Revenue as an adjustment from the assessee. The assessee alone preferred an appeal against the order of the Assistant Collector permitting adjustment of Rs. 7,18,671.55 and thereby declining to refund that amount to the assessee. The Revenue did not make any grievance by resort to any remedy against the refund of Rs. 5,36,155.50 made to the assessee. To that extent, the matter has, therefore, become final. The only surviving question now is for the amount of Rs. 7,18,671.55 which the Tribunal by the impugned order directed to be refunded to the assessee.

2. Learned counsel for the Revenue placing reliance on the decision of this Court in Mafatlal Industries Ltd. v. Union of India, Mafatlal Industries Ltd. case, raised the plea of unjust enrichment and contended that the assessee was not entitled to the refund of the remaining amount of Rs. 7,18,671.55 since it had not shown that the burden of the tax had not been passed on to the consumers. Learned counsel for the respondent/assesses replied by contending that in a case like the present, there was no occasion for the assessee to plead that the tax burden had not passed on to the consumer prior to the decision in Mafatlal Industries Ltd. case, Mafatlal Industries Ltd. case, . He submitted that in view of the decision in Mafatlal Industries Ltd. case, Mafatlal Industries Ltd. case, which came during the pendency of this appeal and the point raised of unjust enrichment having become available in such a proceeding by virtue of that decision the assessee should be given an opportunity to plead and prove that the tax burden was not passed on to the consumers.

3. In our opinion, this appeal has to be disposed of in the manner indicated in Mafatlal Industries Ltd. case, It is clear that the surviving refund claim of Rs. 7,18,671.55 has to be decided in terms of the provisions of Section 11-B of the Central Excises and Salt Act, 1944 as amended in 1991 and the assessee has to be given an opportunity to support the claim for refund in the manner indicated in that provision. It is also clear that the refund of Rs. 5,36,155.50 made to the assessee as a consequence of the Assistant Collector's order has become final since the same was not challenged by the Revenue. The further enquiry is now to be confined only to the amount of Rs. 7,18,671.55.

4. For the aforesaid reasons, we set aside the impugned orders of the Assistant Collector (Appeals) and the Tribunal's to the extent it relates to the amount of Rs. 7,18,671.55 and remit the matter to the Assistant Collector for deciding the assessee's claim for refund only to this extent afresh in accordance with the decision of this Court in Mafatlal Industries Ltd. case, Mafatlal Industries Ltd. case, . The appeal is disposed of accordingly.