

Union of India and Others

Vs

Mafatlal Fine Spinning & Manufacturing Co. Ltd. and Another

Civil Appeal No. ... of 1996

(B. P. Jeevan Reddy, K. Venkataswami JJ)

15.02.1996

ORDER

1. Heard counsel for the parties.
2. Leave granted.
3. We do not propose to state the facts leading up to this stage for the reason that there is a good amount of controversy as to correct factual situation between the counsel before us. Suffice it to say the following :

When a demand was raised by the authorities for payment of duty in accordance with the alleged provisional assessment, the assessee-manufacturer went to the Bombay High Court and obtained stay on 19-6-1989. The order was to the effect that the assessee shall keep the bank guarantees alive for six months after the disposal of the petition and that if he fails in the writ petition, he will pay interest at the rate of 18% per annum on the sum found payable.

4. Now it is brought to our notice that on 12-3-1993, a final assessment has also been made against which appeal is pending in the Tribunal (Bombay Bench). On account of the assessment having been made, the provisional assessment must be deemed to have become unnecessary and therefore the writ petition which was directed against a demand raised pursuant to such alleged provisional assessment also becomes infructuous; so does this appeal. We think it appropriate in the circumstances to direct that in case the assessee is found due in any amount as a result of the order of the Tribunal in the said appeal, the assessee shall pay the said amount along with interest at the rate of 18% per annum from 19-6-1989 up to the date of payment - subject of course to the interim order, if any, by this Court. If, however, the assessee is found entitled to refund of any amount as a result of the Tribunal's order in the said appeal, it is obvious that he shall be entitled to refund of that amount at the same rate of interest from the date of payment up to the date of refund, subject, of course, to the plea of unjust enrichment based on the 1991 amendment, to the Central Excises Act. We express no opinion on the applicability or otherwise of the said Amendment Act herein.

5. With the above observations, the appeal is disposed of.
6. No costs.