

SUPREME COURT OF INDIA

Commissioner of Central Excise, Jamshedpur

Vs.

Usha Beltron Ltd.

C.A.No.615 of 2000

(Dr. A. S. Anand , C.J., R. C. Lahoti and S. N. Variava JJ.)

03.04.2000

ORDER

1. The precise issue involved in this appeal is whether the doctrine of unjust enrichment is applicable where goods are captivity consumed and not sold. The Customs, Excise and Gold (Control) Appellate Tribunal (for short 'the Tribunal') allowed the appeal filed by the assessee-respondent relying upon the judgment of the Bombay High Court in Solar Pesticides (India) Limited v. Union of India: 1992(57)ELT201(Bom) holding that the doctrine was not applicable in respect of raw material imported and consumed in the manufacture of final product. The judgment in Solar Pesticide's case (supra) came up for consideration in the case of Union of India and Ors. v. Solar Pesticides Pvt. Ltd. and Anr. Etc. reported as : 2000(116)ELT401(SC) , before a three Judge Bench of this Court, wherein it was held that the principle of unjust enrichment incorporated in Section 27 of the Customs Act would be applicable in respect of imported raw material which is captivity consumed in the manufacture of final product. In view of the law, thus, laid down, the impugned judgment of the Tribunal cannot be sustained. The appeal, therefore, succeeds and is allowed. The impugned order is set aside.

2. Whether the incidence of duty had been passed on to the consumer or not is a matter on which the Tribunal has not expressed any opinion. Therefore, we consider it appropriate while allowing the appeal to remand the matter to the Tribunal for consideration for that question and render appropriate judgment after hearing the parties. We request the Tribunal to dispose of the matter

expeditiously.

3. No costs.