

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.12.2019

Pronounced on : 16.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.Nos.2509, 2512 and 2515 of 2018
and

C.M.P.Nos.19152, 19153, 19164, 19166,
19181 and 19184 of 2018

M/s. Tata Teleservices Ltd.,
A, E and F Blocks, Voltas Premises
T.B.Kadam Marg, Chinchpakli
Mumbai - 400 033,
Maharashtra.

... Appellant in all CMAs

Vs.

The Commissioner of Customs (Export),
Office of Commissioner of Customs (Export),
60, Rajaji Salai, Custom House,
Chennai - 600 001.

... Respondent in all CMAs

Appeals filed under Section 130 of the Customs Act, 1962,
against the Final Order No.40881-40883/2018, dated 16.02.2018 in
Appeal Nos.C/190/2010, C/191/2010 and C/192/2010 on the file of
the Customs Excise and Service Tax Appellate Tribunal, South
Zonal Bench, Chennai - 6.

CMA.No. 2512 of 2018: To setting aside the impugned Order
No.40882/2010 dated 16.02.2018 passed by the Honourable Tribunal
in Appeal No.191/2010 filed before the Honourable Tribunal.

CMA.No. 2515 of 2018: To consider the above substantial question
of law raised by the Appellant and allow this appeal by setting
aside the impugned order No.40883/2010 dated 16.02.2018 passed
by the Honourable Tribunal in Appeal No. 192/2010 filed before
the Honble Tribunal.

For Appellant : Mr.Tarun Gulati
for Mr.Karthik Sundaram

For Respondent : Mr.K.Magesh, CGSC

COMMON JUDGMENT

R.SURESH KUMAR, J

These Appeals under Section 130 of the Customs Act, 1962 (in short "the Act") are directed against the common order passed in Appeal Nos.C/190 to 192/2010 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (in short "CESTAT") by order, dated 16.02.2018.

2. These appeals were admitted by this Court by order, dated 29.10.2018 on the following Substantial Questions of Law :

"(i) Whether the Hon'ble Tribunal erred in following the judgment of the Hon'ble Court in Scientific Instruments (Supra), which is per incuriam the judgments of the Hon'ble Supreme Court in Mafatlal (Supra) and Allied Photographics (Supra) ?

(ii) Whether the Hon'ble Tribunal failed to appreciate that the Appellant had sought refund prior to 13.07.2006 and therefore, the provisions of Section 18(5) of the Act post amendment cannot be made applicable to the Appellant in light of the judgment of the Hon'ble Supreme Court in CCE v. TVS Suzuki 2003 (156) ELT 161 (SC) and CCE v. Allied Photographics India Ltd., 2004 (166) ELT 3 (SC)?

(iii) Whether the Hon'ble Tribunal erred in upholding the remand in view of the decisions of the Hon'ble Supreme Court in ITC Ltd., v. CCE 2002 (140) E.L.T.4 (SC) and the Hon'ble Rajasthan High Court in Sulzer Processors v. CCE 2010 (254) ELT 559 (Raj.)?"

3. After notice to the respondent, counsel entered appearance and since all these appeals arising out of the common impugned order as referred to above, these appeals are disposed of by this common order.

4. The brief facts which are required to be noticed for the disposal of these appeals are as follows :

(i) That the importer, M/s.Tata Teleservices Ltd., who is the appellant in all these appeals, imported consignments of fixed wireless telephones during various periods from November 2002 to March 2005 vide various Bills of Entry. At the time of filing the Bills of Entry, the importer claimed the classification of these products imported under sub-heading 85252017 of the Customs Tariff Act, 1974 r/w Customs

Notification No.21/2002 (Sl.No.313) thereby seeking exemption under the said notification.

(ii) The very applicability of the said notification since was doubted or disputed by the Revenue, the importer paid the duty under protest and cleared the consignments and accordingly challenged the assessment order also. In a similar issue with regard to the applicability of the very said Notification No.21/2002, the importer company itself already approached the Hon'ble Supreme Court of India, where, the issue was finally concluded by order of the Supreme Court, dated 13.12.2005 in the case of Tata Teleservices Ltd., v. Commissioner of Customs, reported in 2006 (194) ELT 11 (SC). In the said case, the Hon'ble Supreme Court has held that, the notification in question would be applicable to the importer also in respect of the wireless telephones imported by it.

(iii) Consequent upon the said declaration of law made by the Hon'ble Apex Court with regard to the applicability of the exemption notification, the importer filed refund application. Since the said consignments of imports made by the importer between November 2002 and March 2005 had been made into three category period wise, the first set of consignments was in the period between November 2002 and August 2003. The second one was between November 2004 and December 2004 and the third one was for the period of March 2005. For a better understanding, the date of refund application made by the importer / appellant in respect of these three periods are provided as follows :

Sl.No.	Date	Description
1.	01.03.2006	Refund application submitted by the Appellant for the period from November 2002 to August 2003 (C.M.A.No.2509/2018)
2.	11.02.2006	Refund application submitted by the Appellant for the period March 2005 (C.M.A.No.2525/2018)
3.	16.02.2006	Refund application submitted by the Appellant for the period from November 2004 to December 2004 (C.M.A.No.2512/2018)

(iv) The adjudicating authority, in the order-in-original allowed the refund claimed by the importer / appellant for the period between November 2002 and August 2003, except in respect of one Bill of Entry, dated 22.11.2002, which was rejected as time barred. As against the said order, the Revenue preferred an appeal to Commissioner (Appeals) in Appeal No.1/2010. Like that, for the period between November 2004 and December 2004, the adjudicating authority, in order-in-original has allowed the refund application of the importer / appellant in respect of 123 Bills of Entry. Against the said order, the Revenue filed Appeal before the Commissioner (Appeals) in Appeal No.2/2010. For the third period, i.e., for March 2005, the refund application filed by the importer / appellant, dated 11.02.2006 with regard to 28

Bills of Entry since had been rejected by the original authority, the importer preferred Appeal before the Commissioner (Appeals) in Appeal No.3/2010.

(v) That is how Appeal Nos.1/2010, 2/2010 and 3/2010 came before the Commissioner (Appeals), out of which, the first two appeals were preferred by the Revenue and the third appeal was preferred by the importer and all those appeals were decided on 04.01.2010, of course by different orders by the Commissioner (Appeals), whereby all the three appeals were ordered, by which, the issue was remanded back to the original authority to examine the issue of unjust enrichment and accordingly, decide the refund claim made by the importer.

(vi) Aggrieved over the said orders passed by the Commissioner (Appeals), dated 04.01.2010, in all the three appeals referred to above, the importer preferred further appeal before the CESTAT in Appeal Nos.190 to 192 of 2010. These three appeals were heard together and decided by the CESTAT, vide its common order, dated 16.02.2018, whereby the CESTAT has confirmed the order of Commissioner (Appeals) in all those three appeals, thereby rejected the appeals filed by the importer against the Commissioner (Appeals) and the said order of the CESTAT, dated 16.02.2018 is impugned herein. As against which these three instant appeals have been filed by the importer / appellant in C.M.A.Nos.2509, 2512 and 2515 of 2018. That is how all these three appeals have come up before this Court for consideration.

5. Heard Mr.Tarun Gulati, learned counsel appearing for the importer / appellant, who made a prime submission that, the Commissioner (Appeals) in his order, dated 04.01.2010 ought not to have remanded the matters back to the original authority to examine the unjust enrichment issue since such an exercise would be possible for the original authority to undertake only under Section 18(5) of the Act. However the said Section 18(5) was inserted by Taxation Laws (Amendment) Act 2006, w.e.f. 13.07.2006, where as the application for refund since has been made by the importer / appellant in all the three cases well before the said date of 13.07.2006, i.e., on 01.03.2006, 11.02.2006 and 16.02.2006 which are the subject matters in C.M.A.Nos.2509, 2515 and 2512 of 2018 respectively.

6. In this context, it is the further submission of the learned counsel that, Section 18(5) shall not have any retrospective effect and if at all under Section 18(5) original authority has to act upon to examine the aspect of unjust enrichment, that shall be done only in the cases where applications are made subsequent to the said sub-section came into effect, i.e., after 13.07.2006 and not prior to that.

7. In support of his contention, the learned counsel has relied upon the following decisions :

(i) Commissioner of Customs v. Hindalco Industries Ltd., 2008 (231) E.L.T.36 (Guj.)

(ii) Commissioner of Customs v. Indian Oil Corporation, 2012 (282) E.L.T. 368 (Del.)

(iii) Mangalore Refinery & Petrochemicals Ltd., v. C.C., Mangalore, 2015 (323) E.L.T.484 (Kar.)

8. By relying upon these decisions, the learned counsel would expand his submission by saying that, the relevant sub-section in Section 18 had been introduced with effect only from 13.07.2006, therefore, before which, the refund is automatic, as without even making an application, that could be possible. Once an application is made for getting the refund of the duty paid under protest by the importer / appellant, merely because the Revenue took time to finalise it, it cannot be construed that, it could be saved notwithstanding the applicability or enforcement date of Section 18(5) of the Act.

9. The learned counsel would also contend that, the CESTAT only relying upon the decision of this Court in Commissioner of Customs (Export), Chennai v. Scientific Instruments Company Ltd., reported in 2014 307 ELT (Mad), has concluded the issue stating that, though there has been a different view taken by the Gujarat High Court in Hindalco Industries Ltd., (supra) that, Section 18 of the Customs Act amended from 13.07.2006 making unjust enrichment applicable to refund claims arising out of the finalization of provisional assessment does not have retrospective effect, by way of judicial discipline, following the decision laid in Scientific Instruments case (supra), the Tribunal found that, there was no infirmity in the order passed by the Commissioner (Appeals) remanding the matters back to the original authority for examining the issue of unjust enrichment and accordingly, dismissed the appeals filed by the importer / appellant. This view taken by the CESTAT, according to the learned counsel for the importer / appellant, is erroneous and therefore a substantial question of law has arisen as has been framed at the time of admission of these appeals and therefore the same may be decided in favour of the importer / appellant and against the revenue, he contended.

10. Per contra, Mr.K.Magesh, learned Central Government Standing Counsel appearing for the respondent / Revenue would make submissions that, even though Section 18(5) of the Act has come into effect only from 13.07.2006, it does not make any difference in as much as the power of the Revenue to examine and evaluate whether there has been an element of unjust enrichment in cases of such nature as of the present one seeking refund is always there, as the unjust enrichment theory can very well be gone into even under Section 27 of the Act and therefore the said contention raised on behalf of the importer / appellant that, before 13.07.2006, the Revenue has no business to verify the compliance of unjust enrichment cannot be countenanced.

11. The learned Standing counsel would further submit that, assuming that Section 18(5) did not come into effect from 13.07.2006, that would not ipso facto makes redundant the job of evaluating the unjust enrichment in view of the law having been declared by this Court in Scientific Instruments Co., Ltd., case (cited supra). By further elaborating his contention, the learned Standing counsel would also contend that, in Scientific Instruments Co., Ltd., (supra), a Division Bench of this Court, following the dictum made by the Hon'ble Supreme Court in Mafatlal Industries Ltd., v. Union of India, reported in (1997) 5 SCC 536 has held that, when it is a provisional assessment followed by finalization of assessment under Section 27 of the Act, any refund question arising thereon must be subject to proof of not passing on the burden of duty to others. Therefore unless the assessee establishes that, he has not passed the burden of duty to another, he would not be entitled to refund as pointed out by decision in the case of Mafatlal (supra). By holding so, since the Division Bench, in Scientific Instruments has taken a clear view that, the test of unjust enrichment is not antithesis prior to 13.07.2006 has to be borne in mind and that is the reason why, the Tribunal, i.e., CESTAT has followed the dictum in Scientific Instruments and confirmed the order of Commissioner (Appeals), who remanded the issue of unjust enrichment to be evaluated by the original authority. Therefore the learned counsel would contend that, there has been absolutely no reason to interfere with the order impugned of the CESTAT and hence these appeals are deserved to be rejected.

12. We have heard the rival contentions raised by the learned respective counsels appearing for the parties and we have given our anxious consideration to the said arguments as well as the materials placed before us for perusal.

13. The controversy revolves in these appeals, in our considered opinion, is in very narrow compass. In order to dwell into the same, for a easy reference, the relevant provision of the Act, namely Section 18(5) is extracted hereunder :

"18.

(1)...

(2)...

(3)...

(4)...

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to -

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had

not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use.

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75."

14. This sub-section (5) along with subsection (3) and (4) were introduced w.e.f. 13.07.2006 by Taxation Laws (Amendment) Act, 2006. Clause (a) of sub-section (5) makes it clear that, the duty and interest if any paid by the importer can be refunded, provided if he had not passed on the incidence of such duty and interest, if any paid on such duty, to any other person. Therefore it became mandatory that, by virtue of sub-section (5) of Section 18, unless the importer is able to prove that, he has not passed on the incidence of such duty and interest, if any paid, to any other person, he would not be entitled to claim refund.

15. In this context, it is the case of the importer / appellant as vehemently contended by the learned counsel appearing for the importer / appellant that, the said sub-section (5) of Section 18, since has application only from 13.07.2006 and as per the various decision of the High Courts as has been relied upon by him, it would not have any retrospective effect, the said provision shall not be made applicable to the case of the importer / appellant herein, since admittedly all the three applications of the importer / appellant seeking refund were made well prior to 13.07.2006.

16. May be true that, these applications were prior to 13.07.2006 and the decisions of some of the High Courts referred to above also supports the case of the importer / appellant on this aspect.

17. We have given our anxious consideration on the point as to whether sub-section (5) of Section 18 would have only the prospective effect from 13.07.2006 and if so thereby any applications made claiming refund prior to the said date would not be treated in applying the principles underlined under the said sub-section (5) of Section (18), namely unjust enrichment principle and if that is so, as to whether the importer / appellant is entitled to get the refund automatically, without

having reference to the unjust enrichment procedure as contemplated under Section 18(5) and in that case, whether the order of remand passed by the Commissioner (Appeals) as has been confirmed by the CESTAT in the impugned orders are sustainable or not.

18. The said question, apart from the angle, as has been adopted by the Coordinate Bench of this Court in Scientific Instruments case (cited supra), can also be looked into from a different angle. In this process, we would take the endeavour to go into the import of sub-section (2) to Section 18, which reads thus :

"(2) When the duty leviable on such goods is assessed finally (or re-assessed by the proper officer) in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty (finally assessed or re-assessed, as the case may be) and if the amount so paid falls short of, or is in excess of [the duty (finally assessed or re-assessed, as the case may be)], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be.

(b) in the case of warehoused goods, the proper officer may, where the duty [finally assessed or re-assessed, as the case may be], is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty."

19. Where the words, "when the duty leviable on such goods is assessed finally", have been employed which gives the meaning that, once the assessment is made finally, then under clause (a) of sub-section (2), if the amount so paid already falls short off, he shall pay the deficiency and if the amounts paid already is in excess of the duty finally assessed or re-assessed, such duty, i.e., excessively paid, to be refunded.

20. Therefore it has been made very clear that, the moment the goods are subjected to final assessment or re-assessment, where it is found that, the duty paid already is in excess, then only the refund issue would come. Sub-section (5) makes it clear that, what is the amount of duty refundable under sub-section (2) has to be refunded in the manner provided under the said sub-section (5). Therefore the eligibility clause for getting refund of the excess duty paid already emanates from sub-section (2), where it makes clear that, once the assessment is finally

made or re-assessed, then only, whether he is entitled to refund or not to be decided. Once his eligibility to refund is decided, the same is subject to the unjust enrichment test, in view of the words employed in clause (a) of sub-section (5), i.e., "if he had not passed on the incidence of such duty and interest, if any paid on such duty, to any other person".

21. Only in this context, we look at the Scientific Instruments case, where a Coordinate Bench of this Court has taken the view, which is extracted hereunder for ready reference :

"6. The question that falls for consideration is as to whether the respondent / importer is automatically entitled to refund claim solely on the ground that provision for unjust enrichment was incorporated under Section 18 of the Customs Act, 1962 with effect from 14(13)-7-2006 and in the instant case, the provisional assessment having been finalised prior to the date of insertion of the said provision.

7. The Hon'ble Supreme Court in the case of Mafatlal Industries Ltd., and Others v. Union of India and Others reported in (1997) 5 SCC 536 = 1997 (89) E.L.T. 247 (SC) considered the question relating to refund claim under Central Excise and Customs Act and held as under :

"104. Rule 9B provides for provisional assessment in situations specified in clauses (a), (b) and (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are finally assessed. Sub-rule (5) provides that "when the duty leviable on the goods is assessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisionally assessed falls short of or is in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be." Any recoveries

or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B, as the case may be. However, if the final orders passed under sub-rule (5) are appealed against - or questioned in a writ petition or suit, as the case may be, assuming that such a writ or suit is entertained and is allowed / decreed - then, any refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the case may be, would be governed by Section 11B. It is also made clear that if an independent refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the case may be, would be governed by Section 11B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9B(5) reagitating the issues already decided under Rule 9B - assuming that such a refund claim lies - and is allowed, it would obviously be governed by Section 11B. It follows logically that position would be the same in the converse situation."

Further, the Supreme Court in the case of Mafatlal Industries Ltd., (supra) observed the nature and the character of refund claims under the Central Excises and Salt Act and the Customs Act as under :

"Nature and character of refund claims under the Central Excises and Salt Act and the Customs Act

105. It would be evident from the above discussion that the claims for refund under the said two enactments constitute an independent regimen. Every decision favourable to an assessee / manufacturer, whether on the question of

classification, valuation or any other issue, does not automatically entail refund. Section 11B of the Central Excises and Salt Act and Section 27 of the Customs Act, whether before or after the 1991 Amendment - as interpreted by us herein - make every refund claim subject to proof of not passing on the burden of duty to others. Even if a suit is filed, the very same condition operates. Similarly, the High Court while examining its jurisdiction under Article 226 - and this Court while acting under Article 32 - would insist upon the said condition being satisfied before ordering refund. Unless the claimant for refund establishes that he has not passed on the burden of duty to another, he would not be entitled to refund, whatever be the proceeding and whichever be the forum. Section 11B / Section 27 are constitutionally valid as explained by us herein before. They have to be applied and followed implicitly wherever they are applicable."

8. Therefore, in the case of provisional assessments made and thereafterwards, it results in a refund, even in the absence of a provision of refund, if an assessee has to claim as refund, under equity, he must prove that there is no unjust enrichment and that the liability had not been passed on to the customer. That being the case, refund is not automatic one merely on the score of provisional assessment being followed by final assessment and unless and until the assessee substantiates the claim backed by the proof that the liability has not been passed on to the customer, such a refund claim may be termed as unjust and the claim cannot be granted as a mere consequence for refund arising on final assessment.

9. Learned counsel appearing for the

importer / assessee submitted that having regard to the above said observation of the Apex Court in the case of Mafatlal Industries Ltd., (supra) the observation by the Tribunal in paragraph 6.2 has to be set aside. The Tribunal pointed out that the order of the Tribunal dated 9-7-2007, the provisional assessment finalized in the year 2000 was set aside resulting in a refund to be made to the assessee. The Tribunal pointed out that on account of such finalisation of the provisional assessment finalized in the year 2000 was set aside resulting in a refund to be made to the assessee. The Tribunal pointed out that on account of such finalisation of the provisional assessment, excess amount to be paid to the assessee was ordered to be refunded prior to 1-8-1998. To this end, it referred to the decision of the Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd., (cited supra) that prior to 13-7-2006, which became due on final assessment is to be made without the claim being submitted by the assessee and applying the unjust enrichment, proportionately refund has to be granted.

10. We do not find this observation of the Tribunal merits acceptance by this Court particularly in the context of the decision of the Apex Court in the case of Mafatlal Industries Ltd., (supra). When the assessee admits that provisional assessment was followed by a finalisation of assessment being finalised, under Section 27 of the Customs Act - any refund question arising thereon must be subject to proof of not passing on the burden of duty to others. Thus, in the absence of equity, i.e., unless the assessee establishes that he has not passed on the burden of duty to another, he would not be entitled to refund as pointed out by the decision in the case of Mafatlal Industries Ltd., (supra). Even in equity, the assessee is bound to substantiate its claim by showing bona fide that the payment of duty and claim not backed by unjust enrichment and the duty has not passed on to the customer, but it was borne out by the assessee

only.

11. In the light of the principles stated above, we allow the appeal, thereby, we set aside the order. However on the observation made herein, the Assessing Officer shall consider the aspect of unjust enrichment. Thus, in fitness of things and in the interest of justice, the matter is restored to the Assessing Officer so as to enable to adjudicate the question of unjust enrichment. It is for the assessee to substantiate that the duty paid by the assessee was not passed on liability but one paid by the assessee itself and subject to proof let in, the Assessing Officer shall consider the claim of the assessee."

22. In fact, the Division Bench in Scientific Instruments case (supra), has held so, after following the dictum of the Hon'ble Supreme Court in Mafatlal Industries case (supra).

23. From the reading of the aforesaid Section 18(2) and (5) of the Act as well as the decision of the Scientific Instruments case (supra) of a Coordinate Bench of this Court, we are of the considered view that, the importer has to necessarily satisfy the unjust enrichment test before the original authority not withstanding the fact that, he has made the claim for refund in all the three cases before 13.07.2006.

24. Since the final assessment was not over and before which based on the provisional assessment under Section 18(1) since duty had been paid by the importer, of course under protest and thereafter consequent upon the eligibility of the importer after the Judgment of the Hon'ble Apex Court in their own case in Tata Teleservices Ltd., v. Commissioner of Customs reported in 2006 (194) ELT 11 (SC) (cited supra), the importer made those applications.

25. Merely because those applications for claim of refund were made prior to 13.07.2006, it cannot be said that, the import of sub-section (5) of Section 18 has become redundant especially in the context of unjust enrichment theory.

26. This of our view is because of the language used in sub-section (2) of Section (18) which has already been in the statute, i.e., in the Act prior to 13.07.2006, which makes it clear that, the duty leviable on such goods is assessed finally, then only the question of refund would arise. After the final assessment if the importer is otherwise eligible to get refund under any exemption given by way of notification or otherwise, the importer can make a claim for refund, at that time, certainly the Revenue would be entitled to go into the

correctness of such claim by putting the test of unjust enrichment on the importer and in such case, it is the duty of the importer to establish that, he had not passed on the incidence of such duty to any other person. Therefore it is the factual matrix, that too, to the subjective satisfaction of the assessing or adjudicating authority who must come to a conclusion that, there has been no unjust enrichment on the part of the importer and then only he must allow the refund claim of the importer even though the importer already entitled to make such a claim statutorily.

27. If these principles are applied, even though the decisions, referred to by the importer / appellant, of various other High Courts, have given a different interpretation, however, we are in respectful agreement with the Coordinate Bench of this Court in Scientific Instruments Co., Ltd., case (cited supra), as the same was made following the dictum of the Hon'ble Apex Court in Mafatlal case (cited supra) of the Hon'ble Apex Court.

28. Though it was brought to the notice of this Court by the learned counsel appearing for the importer / appellant that, the Scientific Instruments Co., Ltd., (supra) has been appealed to the Hon'ble Supreme Court, where the leave was granted and the Civil Appeal is pending in Special Leave to Appeal (C).Nos.3674 of 2019, the learned counsel appearing for the importer / appellant has fairly submitted that, there has been no stay of the operation of the Judgment of the Scientific Instruments case of a Coordinate Bench of this Court cited supra. Therefore, since the Tribunal, having relied upon the decision of the Scientific Instruments case (supra), has passed the order impugned affirming the decision of the Commissioner (Appeals) to remand the matters back to the original authority to decide the unjust enrichment issue, we find no plausible reason to interfere with the said view taken by the CESTAT in the impugned order. Therefore the impugned order of the Tribunal is to be sustained and these appeals are to be rejected.

In view of the aforesaid, we answer the Substantial Questions of Law framed in these appeals against the importer / appellant and in favour of the Revenue and accordingly, dismiss these appeals. However there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Customs Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
Chennai - 600 006.

2. The Commissioner of Customs (Export)
Office of Commissioner of Customs (Export),
60, Rajaji Salai, Custom House,
Chennai - 600 001.

+1cc to Mr.K.Magesh, Advocate, S.R.No. 104224

+3cc to Mr.Karthik Sundaram, Advocate, S.R.No. 104337, 104338,
104339

C.M.A.Nos.2509, 2512 and 2515
of 2018

VSN II(CO)
GN(24/01/2020)



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