**(1985) 07 DEL CK 0026**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 231 of 1973

Ajanta Iron and Steel Co. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 24-07-1985

**Acts Referred:**

**Citation :** (1989) 42 ELT 537

**Hon'ble Judges :** Sunanda Bhandare, J

**Bench :** Single Bench

## Judgement

Sunanda Bhandare, J.—The petitioner has challenged the orders dated 3rd May, 1968, 8th January, 1969 and 27th July, 1972 passed by respondent No. 2, 3 and 4 respectively refusing to refund the excise duty paid by the petitioner in this writ petition under Article 226 of the Constitution of India.

2. The petitioner is a registered partnership firm carrying on the business of manufacture of iron and steel products. Between the period March 1966 and August 1967 the petitioner firm manufactured flat products of the thickness between 5 mms. and 10 mms. and of width between 25 mms. and 63 mms. Theses flats were rolled out of duty paid billets purchased from steel plants. Such billets were supplied by the steel plants to the petitioner firm after payment of excise duty at the rate of Rs. 125/- per metric tonne. The case of the petitioner is that the flats of the description mentioned herein above fell under the category of ''bars'' vide Indian customs Tariff Guide 8th Edition (published in 1934) and Therefore, were not chargeable to differential duty. 3. During the period 23rd March, 1966 and 21st February, 1967 the petitioner firm paid Rs. 23,056.82 on account of differential duty on such products at the rate of Rs. 10/- per metric tonne. Similarly for the period between 3rd March, 1967 to 8th May, 1967 the petitioner firm paid Rs. 2,432.92 as differential duty. Another quantity of similar products was cleared between 2nd June, 1967 and 19th August, 1967 the petitioner paid Rs. 3,289.22 as differential duty. The petitioner firm paid this duty under protest which was noted on the AR 1 form. By a trade notice dated 22nd

 

June, 1967 issued by the Collectorate of Central Excise, Calcutta and Orissa, it was clarified that the flats having thickness of more than 3/16 inches but less than 1-1/2 inches and having a width of less than 5 inches should be classified as ''Bars''. The petitioner firm, Therefore, on 26th August, 1967 made an application for refund of the duty paid by them. As regards the duty paid by the petitioner firm in respect of the goods cleared by them between the period 2nd June, 1967 to 19th August, 1967 the refund application was allowed and the petitioner firm was refunded the amount paid by them. As regards the duty paid for the periods between 23rd March, 1966 and 21st February, 1967 and 3rd May, 1967 to 8th May, 1967 the application for refund made by the petitioner firm was rejected on the ground that the applications were made beyond three months and were, Therefore, time-barred.

4. The short question for determination in this writ petition is whether the petitioner firm was entitled to get the refund of the duty paid by them and whether the petitioner could take advantage of the trade notice dated 22nd June, 1967.

5. It was contended by the learned Counsel for the petitioner that the petitioner could apply for refund only after the trade notice was issued and the time of three months should be calculated from the date of the trade notice i.e. from 22nd June, 1967 and that since the petitioner firm had made the refund application on 26th August, 1967 the refund applications were within time.

6. It appears that both are appellate as well as the revisional authorities rejected refund applications of the petitioner firm on the ground that the refund applications were filed beyond time. It has been held time and again that the Government can levy only as much duty as they are entitled to recover according to law and nothing more. Just as the citizen has a duty to pay all the taxes lawfully due from him, it is the legal obligation of the Government to charge as much amount of duty which is legally payable by the citizen. In the present case, since the trade notice was issued on 22nd June, 1967 the refund applications which were made on 26th August, 1967 were within the time prescribed by Rule 11 of the Central Excise Rules, 1944. The petitioner could not have made the application till the position had been clarified. In any event Govt. should not stand on technicalities and refuse the legitimate claim of its citizens.

7. In the result, the writ petition is allowed and the petitioner firm would be entitled to the refund of Rs. 25,689.74 in respect of their claims submitted by them vide letter No. CE/87/67/1118 dated 26th August, 1967 recovered from the petitioner for the goods cleared by them for the period during March, 1966 to February, 1967 and 3rd May, 1967 to 8th May, 1967. There will be no order as to costs.