(2012) 11 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (C) No. 1166 and 2325 of 2012

Amalgamated Plantations (P) Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3(3)
Central Excises and Salt Act, 1944 — Section 11, 11B, 11B(1), 11B(2), 11BB

Citation : (2013) 2 GLD 554 : (2013) 2 GLT 413

Hon'ble Judges : Adarsh Kumar Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : S.K. Kejriwal, Mrs. S. Kejriwal, Mrs. M. Hazarika and Ms. A. Ajitsaria, for the Appellant; R. Dubey, SC, Central Excise, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—This Judgment will dispose of W.P. (C) No. 1166/2012 and W.P. (C) No. 2325/2012. Question for consideration in both the writ petitions is the entitlement of the petitioners to interest u/s 11BB of the Central Excise Act, 1944 on the delayed excise duty refund by the department to the petitioners.

2. The relevant facts of the two cases may be briefly noted.

W.P. (C) No. 1166/2012

3. Petitioner is a company incorporated under the Companies Act, 1956, owning amongst others the Chabua Tea Estate in the district of Dibrugarh, Assam. Petitioner is engaged in the business of cultivation and manufacture of tea and tea waste, which are exigible to excise duty under Chapter-9 of the Schedule to the Central Excise Tariff Act, 1985, having central excise registration number.

4. The Central Government formulated new industrial policy in the year 1997 giving various incentives to stimulate industrial development in the North Eastern Region. Such incentives included exemption from payment of excise duty for a period of 10 years from commencement of production.

5. Pursuant thereto, Department of Revenue, Ministry of Finance, Government of India issued Notification No. 33/99-CE dated 08.07.1999 giving concessions in excise duties. The said notification was issued in exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excise Act, 1944 read with Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Section 3(3) of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978. By the said notification, the goods specified in the schedule and cleared from a unit located in any one of the States in the North Eastern Region, including in the State of Assam, were exempted from excise duty leviable thereon.

6. Petitioner filed a claim on 18.10.2004 before the Assistant Commissioner of Central Excise, Dibrugarh for refund of excise duty paid for the period from 08.07.1999 to 28. 02.2003 amounting to Rs. 1,10,61,418/-. The claim was made in terms of the aforesaid notification dated 08.07.1999, as amended.

7. The Assistant Commissioner of Central Excise, Dibrugarh (respondent No. 4) vide order dated 10.05.2005 held that the petitioner was eligible for exemption under notification dated 08.07.1999. Thereafter, respondent No. 4 vide order dated 05.08.2005 sanctioned refund of Rs. 77,52,409/- in favour of the petitioner out of the claimed amount of Rs. 1,10,61,418/-. Respondent No. 4 stated that the refund claim for the months of August, 1999, September, 1999, May, 2000, September, 2000, November, 2001 and December, 2001 involved amounts of over Rs. 5 lakhs, which required audit clearance. Thus, an amount of Rs. 33,09,009/- (Rs. 1,10,61,418/- - Rs. 77,52,409/-) was kept pending.

8. The sanctioned amount of Rs. 77,52,409/- was refunded to the petitioner.

9. Commissioner of Central Excise, Dibrugarh (respondent No. 3) preferred appeal against aforesaid order dated 5.8.2005. The appellate authority i.e. Commissioner (Appeals), by order dated 31.01.2006 rejected the appeal and upheld the order dated 05.08.2005.

10. Revenue thereafter preferred appeal before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (CESTAT). However, CESTAT by order dated 21.6.2011 dismissed the appeal filed by the Revenue.

11. Against order of CESTAT, Revenue filed further appeal before this Court, which was registered as C.Ex. Appeal No. 5/2011. This Court by order dated 19.12.2011 dismissed the appeal holding that no substantial question of law arose in the appeal.

12. Inspite of such orders of the appellate authorities rejecting the appeals filed by the Revenue, the balance amount of Rs. 33,09,009/- was not refunded to the petitioner. Petitioner, therefore, filed the related writ petition seeking a direction to the respondents to refund the aforesaid amount to the petitioner alongwith applicable interest.

W.P. (C) No. 2325/2012

13. Petitioner No. 1 is a partnership firm with petitioner No. 2 as one of the partners, engaged in the business of manufacture and sale of made tea, which is an excisable good under Chapter 9 of the Schedule to the Central Excise Tariff Act, 1985.

14. Under the notification dated 8.7.1999, the goods manufactured by the petitioner No. 1, on which excise duty was levied, were exempted from payment of excise duty.

15. The Assistant Commissioner, Central Excise, Nagaon by order dated 04.08.2003 held that the petitioner was eligible for exemption under the notification dated 8.7.1999 from 28.03.1998. Petitioners thereafter submitted application dated 22.04.2004 for refund of excise duty amounting to Rs. 10,44,628/- realized from the petitioner No. 1.

16. The Assistant Commissioner, Nagaon by order dated 16.06.2004 sanctioned an amount of Rs. 10,44,628/- as excise duty refund to be repaid to the petitioner No. 1 for the period from 01.01.2001 to 14.07.2002. The said authority also passed order to appropriate an amount of Rs. 9,88,010/- from the aforesaid sanctioned amount as interest u/s 11AB of the Central Excise Act, 1944. Accordingly, refund of Rs. 56,618/- was ordered for payment to petitioner No. 1.

17. Petitioners filed W.P. (C) No. 7251/2004 before this Court questioning the aforesaid action of the authority on levying interest on the excise duty refund and appropriating major chunk of the excise duty refund. A Single Bench of this Court by the Judgment and Order dated 22.04.2010 declared such appropriation to be unauthorized in law and directed the Revenue to refund the appropriated interest amount to the assessee forthwith.

18. Thereafter, the Assistant Commissioner by order dated 08-10-2010 sanctioned refund of Rs. 10,44,628/- to petitioner No. 1.

19. Petitioners vide letter dated 31.01.2011 requested the Assistant Commissioner to pay interest for the delay in making the refund. As there was no response, petitioners submitted reminders and further representations. Ultimately, the Assistant Commissioner, Central Excise, Nagaon by order dated 23.11.2011 rejected the demand for payment of interest on the ground that in case of refund under notification dated 08.07.1999, section 11B of the Central Excise Act, 1944 is not applicable and consequently, interest u/s 11BB of the said Act would not be payable.

20. Aggrieved, the petitioners have preferred the related writ petition challenging the legality and validity of the aforesaid order dated 23.11.2011 and seeking a direction to the respondents to pay interest on the delayed refund.

21. Respondents have filed counter affidavit in W.P. (C) No. 1166/2012. In the said counter, it is stated that refund claim of Rs. 33,09,009/- was taken up for expeditious disposal. Ultimately, by order dated 27.03.2012 passed by the Assistant Commissioner, Dibrugarh, an amount of Rs. 32,05,103/- was

sanctioned for refund to petitioner. The said amount was paid to the petitioner vide cheque dated 27.03.2012. On the clam of interest, the respondents stated that nature of refund envisaged in the notification dated 08.07.1999 is qualitatively different from refund u/s 11B of the Central Excise Act, 1944 as it was not on account of any excess payment of excise duty by the manufacturers but was designed to give effect to exemption. Consequently, it is contended that provision of Section 11B of the Central Excise Act, 1944 would not be applicable in such cases.

22. We have heard Mrs. M. Hazarika, learned Senior Counsel and Ms. S. Kejriwal, learned Counsel for the petitioners. We have also heard Mr. R. Dubey, learned Standing Counsel, Central Excise for the respondents.

23. As the issue involved in both the cases is the same, as has been noticed at the very outset, both the cases were heard together and are being disposed of by this common judgment.

24. Before we proceed further, relevant portion of the notification dated 08.07.1999 may be looked into. As has already been noticed earlier, the said notification has been issued amongst others in exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944. The exemption provided by the said notification is given effect to in the following manner-

(i) the manufacturer shall submit a statement of the duty paid to the jurisdictional central excise authority by the 7th day of the next month in which the duty has been paid,

(ii) the jurisdictional central excise authority, after verification, shall refund the amount of duty paid during the month under consideration to the manufacturer by the 15th day of the next month,

(iii) if there is likely to be any delay in the verification, the jurisdictional central excise authority shall refund the amount on provisional basis by the 15th day of the next month to the month under consideration and, thereafter, may adjust the amount of refund by such amount as may be necessary in the subsequent refunds.

25. Thus, it is quite clear the once it is held that a manufacturer is entitled to exemption of excise duty in terms of the notification dated 08.07.1999, the excise duty paid shall be refunded to the manufacturer as per the schedule mentioned in the said notification. Even in case of likely delay, refund has to be made on provisional basis. Therefore, there cannot be any manner of doubt that the admissible excise duty refund cannot be withheld by the central excise authority.

26. Section 11B of the Central Excise Act, 1944 deals with claim for refund of duty. It provides that any person claiming refund of any duty of excise may make an application with relevant documents and evidence for refund of such duty to the Assistant Commissioner of Central Excise before the expiry of six months

from the relevant date. Under sub-section (2) of section 11B, if on receipt of any such application, the Assistant Commissioner is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly.

27. u/s 11BB of the Central Excise Act, 1944, if any duty ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate which may be fixed by the Central Board of Excise and Customs on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

28. From a conjoint reading of sections 11B and 11BB of the Central Excise Act, 1944, it is apparent that if any refund of excise duty is ordered u/s 11B(2), the same has to be refunded within three months from the date of receipt of application under sub-section (1) of that section, failing which interest will have to be paid. Language of section 11B is very clear and unambiguous. It speaks of claiming refund of any (emphasis ours) duty of excise. No exception is provided. It does not distinguish or differentiate between any kind of excise duty refund, whether duty paid in excess or duty paid which are exempted. As pointed out by the Hon''ble Supreme Court in the case of Ranbaxy Laboratories Ltd. Vs. Union of India (UOI) and Others, , it is a well-settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment.

29. In the case of Ranbaxy Laboratories Limited (supra), Hon''ble Supreme Court while examining the aforesaid two provisions, referred to a circular dated 01.10.2002 issued by the Central Board of Excise and Customs, New Delhi wherein and whereby the Board stressed that the provisions of section 11BB of the Central Excise Act, 1944 are attracted automatically for any refund (emphasis ours) sanctioned beyond a period of three months. Hon''ble Supreme Court has held that liability of the Revenue to pay interest u/s 11BB commences from the date of expiry of three months from the date of receipt of application for refund u/s 11B(1) and not on the expiry of the said period from the date on which the order of refund is made.

30. We also find that a Single Bench of this Court in Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. Union of India (UOI), while directing refund of excise duty paid in terms of notification dated 08.07.1999, had also directed payment of interest for delayed payment as per provision of section 11 of the Central Excise Act, 1944.

31. Thus, in view of the discussions made above, we are of the unhesitant view that section 11B of the Central Excise Act, 1944 does not exclude claim of refund made in terms of the notification dated 08.07.1999. Petitioners would, therefore,

be entitled to interest u/s 11BB of the Central Excise Act, 1944 on the excise duty refunded to them. The jurisdictional excise officers shall now determine the interest amount payable to the petitioners for the relevant periods. The amounts found due shall be paid to the petitioners within three months from today. Writ petitions are allowed. However, looking to the facts and circumstances of the cases, there will be no order as to cost.