(1987) 06 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 423 of 1981

Amar Enterprises and another APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 10-06-1987

Acts Referred:

Central Excise Rules, 1944 — Rule 11
Central Excises and Salt Act, 1944 — Section 11B

Citation : (1988) 16 ECR 533 : (1988) 36 ELT 42

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. The petitioners are the manufacturers of what is known as Electronic Gas Lighter. The Excise Department start levying excise duty under Tariff Item No. 39 which read as "mechanical lighter". The petitioners contend that the said product was not "mechanical lighter". The Assistant Collector of Central Excise held by an order dated December 10, 1979 that the said products were covered under Tariff Item No. 39. As against this the petitioners preferred an appeal to the appellate Collector of Central Excise who reversed the decision. Consequently, the petitioners filed three refund applications in respect of the excise duty, dated August 20, 1979, September 17, 1979 and October 15, 1979 to the Assistant Collector of Central Excise. These applications were also rejected by the Assistant Collector by his order dated October 14, 1980. As against this, the petitioners filed an appeal to the Collector of Central excise who by his order dated December 20, 1980 allowed the said appeal and granted the refund of the excise duty paid during the said period. A copy of the said letter is at Ex. E to the petition. The Collector of Central Excise (Appeals) in terms stated that all refund applications were filed within the statutory time limit and he directed that the refund as claimed by the appellants (petitioners) should be granted, and the respondents ought to have given the amount pursuant to this order forthwith. However, in the meanwhile, it appears that the petitioner by letter dated November 14, 1980, requested the respondent to refund the said amount due

under the said refund applications. The Assistant Collector of the Central Excise thought that these were the original applications which was totally wrong and which also indicates total non-application of mind on the part of the respondents. The Assistant Collector of the Central Excise by a letter dated December 31, 1980 held that the claim of refund was barred by limitation as the applications were not filed within the period of six months as provided under Rule 11 of the Central Excise Rules, 1944.

2. Since the Collector of Central Excise has already granted the order of refund, there is no question of passing any further order, by the Assistant Collector of Central Excise. In the result, this petition has to be granted and I pass the following order :

3. The impugned order dated December 31, 1980 being Ex. G stands quashed and the rule is made absolute in terms of prayer ''c''. The petitioners are also entitled to the cost of this petition. The respondents to pay the amount within eight week from the date of the service of this order on the respondents.

