(2009) 10 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 11067 of 2009

Anand Steel Rolling Works Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11

Citation : (2010) 258 ELT 218

Hon'ble Judges : Rajesh H Shukla, J;R.M. Doshit, J

Bench : Division Bench

Advocate : J.J. Yajnik, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This petition under Article 226 of the Constitution is filed by the manufacturer against the order dated 20th July 2009 passed by the Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad [hereinafter referred to as, "the Tribunal" in Appeal No. E/768/09.

2. It appears that in respect of the demand in the sum of Rs. 13,21,483/-the deficit of the duty, made by the Commissioner of Excise, the Petitioner a manufacturer of MS Bars, had preferred appeal before the Tribunal. Pending the said appeal, the Petitioner was called upon to deposit a sum of Rs. 3 lakhs. The Tribunal, by its judgment and order dated 9th April 2008 allowed the appeal partially. The demand to the extent of Rs. 4,46,378/- was upheld. For the remaining claims, the matter was remanded to the Commissioner [Appeals] to make fresh order. In view of the order of remand made by the Tribunal, the Petitioner was entitled to refund of the said deposit of Rs. 3 lakhs. In answer to the Petitioner''s demand for refund, the Assistant Commissioner by his order dated 12th August 2008 allowed the refund of the said sum of Rs. 3 lakhs deposited by the Appellant, however ordered to adjust the said sum of Rs. 3 lakhs against the outstanding dues arising from OIO No. 28/91 dated 15th February 1991. The challenge to the said order was rejected by the

Commissioner [Appeals] by his order dated 2nd July 2009. The said oder was challenged by the Petitioner before the Tribunal. By the impugned order, the Tribunal has rejected the Appeal. Therefore, the present petition.

3. Learned advocate Mr. Yajnik has appeared for the Petitioner. He has raised two fold contentions. He has submitted that before directing the adjustment of Rs. 3 lakhs against the outstanding dues of the year 1991, the Petitioner had not been afforded opportunity of hearing or representation; and second, the recovery of the dues of the year 1991 by an order made in the year 2008 is grossly belated.

4. Neither of the aforesaid contentions was accepted either by the Commissioner [Appeals] or by the Tribunal below, nor do we agree with the aforesaid contentions. Mr. Yajnik has admitted that the aforesaid order dated 15th February 1991 has become final. The recovery sought to be made by adjustment of the deposit of Rs. 3 lakhs is in consonance with Section 11 of the Central Excise Act, 1944.

5. No case for interference is made out. The petition is dismissed in limine.