

**(1979) 01 KL CK 0028**

**In the High Court Of Kerala**

**Case No : W.A. No. 199 of 1976 O.P. No. 124 of 1975**

Assistant Collector, Central Excise, Appellate Collector of  
Central Excise and Union Government of India, Ministry of  
Finance, Department of Revenue and Insurance

**APPELLANT**

**Vs**

T.T. Pylunny, Prop : Royal Smiths

**RESPONDENT**

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**Date of Decision : 16-01-1979**

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 36

**Citation : (1983) 3 ECR 633D**

**Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J**

**Bench : Division Bench**

**Final Decision : Allowed**

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## **Judgement**

Gopalan Nambiyar, C.J.—The Assistant Co Hector, Central Excise, Ernakulam, the Appellate Collector, Central Excise, Madras, and the Union of India, are the appellants in this appeal against the judgment of the learned Judge allowing O.P. No. 124 of 1975 and declaring Exts. P. 4 and P. 6 fend orders as illegal and holding that the claim for refund preferred by the writ petitioner (respondent herein) was within time and directing the same to be considered on the merits in accordance with law.

2. The respondent is the Proprietor of Royal Smiths, Kunnamkulam, engaged in the manufacture of steel furniture. Between 2.4.1969 and 24.9.1969 he had cleared steel furniture whose total value came to Rs. 1,44,241.50. In accordance with the terms of Ext. P 1 notification which we shall presently notice he filed an application for refund of the duty self-assessed and paid by him. The application was preferred on 29.3.1971. Ext. P 2 notice dated 22.7.1972 was issued to him to show cause why the application should not be rejected as beyond time under Rule 11 read with Rule 173-3 of the Central Excise Rules. It was accordingly rejected by order dated 13.11.1972. The Writ Petitioner appealed (vide Ext. P 3) to the Appellate authority who dismissed the appeal by Ext. P 4 order dated

27.6.1973. A revision preferred u/s 36 of the Act was dismissed by Ext. P 6 order dated 12.8.1974.

3. The learned Judge took the view that on the terms of the Rules read in the light of the exemption notification Ext. P1, the period of limitation would commence only from the last date of the year, and that in that view the petitioner's application should not have been rejected as time-barred.

4. Rules 11 and 173-J may be extracted;

11. No refund of duties or charges erroneously paid, unless claimed within three months.

No duties or charges which have been paid or have been adjusted in an account-current maintained with the Collector under Rule 9, and of which repayment wholly or in part is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be refunded unless the claimant makes an application for such refund under his signature and lodges it with the proper officer within three months from the date of such payment or adjustment, as the case may be.

173-J. Time limit for recovery of short levy or refund of excess levy.--The provisions of Rules 10 and 11 shall apply to the assessee as if for the expression "three months", the expression "one year" were substituted in those rules.

Rule 11 is in Chapter III dealing with levy and refund of, and exemption from, duty; and Rule 173-J occurs in Chapter VII-A dealing with removal of excisable goods on determination of duty by producers, manufacturers or private warehouse licencees. This chapter provides for the method of self-assessment and return by the persons concerned, and clearance of the goods on payment of the duty so self-assessed. We may now notice Ext. P1 notification which granted the exemption and which was the basis of the application for refund of duty preferred by the writ petitioner. The same is as follows:

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts steel furniture falling under item No. 40 of the first Schedule to the Central Excises & Salt Act, 1944 (1 of 1944) upto a value not exceeding rupees fifty thousand, cleared on or after the first day of April in any financial year by or on behalf of a manufacturer from one or more factories for home consumption from the whole of the duty of excise leviable thereon:

Provided that:

(i) This exemption shall not be applicable to such manufacturer whose value of steel-furniture so cleared during such financial year exceeds Rs. two lakhs; and

(ii) where a factory producing steel furniture is run at different times of any financial year by different manufacturers, the value of such steel furniture cleared from such factory, in any such year at nil rate of duty shall not exceed

rupees fifty thousand.

(the proviso following is omitted as unnecessary).

6. There can be little doubt that the Rules which we have quoted place the period of a limitation of an application for refund in this case at a period of one year. The same is to start from the date of payment or adjustment of duty. Being a Rule or a provision providing for limitation in respect of claims for refund, considerations of hardship seem to be out of place although if it is possible to give the rule a construction which would avoid hardship, we should gladly adopt the same. What is contended before us by counsel for the respondent is that unless the view taken by the learned Judge is endorsed the practical working of the Rule would cause hardship and result in injustice. It was pointed out that an application for refund of excise duty can, having regard to the terms of Ext. P1 notification, be preferred only in respect of steel furniture whose total value does not exceed Rs. 50,000/-, and that too, only if the total value of the furniture removed in the course of the year does not exceed Rs. 2 lakhs. It was argued that whether the limit of two lakhs had been exceeded or not, would be known only at the close of the year in question; and therefore, to insist on an application for refund or exemption being made with reference to the earlier point of time in the year on the mere ground that the duty had been paid during that period, would be inequitable and unjust; and would oblige the writ petitioner to make an application for refund irrespective of whether he was or was not hoping to Tall within the limit for obtaining exemption for refund of duty. At the first blush the argument did cause us some concern. But we are satisfied that there is no ground or scope for apprehension of uneasiness. Although the realisation that the goods worth not more than Rs. 50,000/-. There is nothing in Rule 173-J or Rule 11 which obliges a person to confine his claim for refund to the articles removed in the earlier part of the year rather than to the later portions thereof; so that the hardship and the inequity of having to prefer a claim application for refund with respect to the earliest purchases and removals of steel furniture are more imaginary than real, in case or dealers regularly buying and clearing throughout the year. And, as for exceptional cases of heavy concentration of clearance and removal in the early part of the year, with a rule of the type here involved, there is no reason why an application for refund should not be made each time clearance is made, upto the limit of Rs. 50,000/- leaving the authorities to reject the same if the ceiling of Rs. 2 lakhs for obtaining refund had been exceeded.

5. Counsel to some extent, debated before us the abstract question as to whether period of limitation would start running before the cause of action had arisen and whether the period of limitation can be said to run even while there is no person to sue. These would take us to a region of law into which it is unnecessary to enter for the purpose of this case. We think the plain provisions of the Rule must be given effect to; and on the terms thereof, the writ petitioner's application for refund must be found to have been preferred beyond

time. The view taken by the Assistant Collector in his order dated 13.11.1972, and by the Appellate Collector in Ext. P 4 order, and the revisional authority in Ext. P 6 order, was correct and the learned Judge was wrong in interfering with the same. We allow this appeal and set aside the judgment of the learned Judge and direct that O.P. No. 124 of 1975 will stand dismissed. There will be no order as to costs. 16th January, 1979.