(2014) 10 KL CK 0011

In the High Court Of Kerala

Case No : W.P. (C) No. 10158 of 2005 (H)

Cadbury India Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Citation : (2015) 315 ELT 488

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : V.B. Unniraj, R.S. Geetha and P. Anitha, Advocates for the Appellant; Thomas Mathew Nellimoottil, SC, Advocates for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner has approached this Court challenging the levy of countervailing duty (CVD) on a consignment of cocoa beans that was imported by it. The facts in the case reveal that, during the pendency of the writ petition, by an interim order passed by this Court, the petitioner was directed to pay the customs duty and the educational cess on the CVD in respect of the consignment imported. As regards the CVD itself, the interim order of this Court directed the payment of the said amount through a demand draft drawn in the petitioner''s name and kept with the respondents. Subsequently, vide Annexure A1 notification, the levy of CVD, on the consignment of cocoa beans imported during the period from 28-2-2005 to 1-5-2005, was withdrawn by the Central Government. The import effected by the petitioner, under the two bills of entry dated 11-3-2005, stood eligible for the benefit of this notification issued by the Central Government and consequently the liability of the petitioner to CVD in respect of the consignment stood annulled. The petitioner, thereafter, amended the writ petition to claim refund of the educational cess that was paid on the CVD. The claim was for an amount of Rs. 4,10,323/-. It would appear that while the refund applications were filed by the petitioner claiming a refund of the said sum, during the pendency of the writ petition, the Assistant Commissioner of Customs vide Order-in-Original No.

39/2005, dated 28-10-2005 (Ext. P10), rejected the refund claim of the petitioner on the ground that no evidence had been produced to show that the amount claimed as refund by the petitioner had not been passed on to a third person and in that respect the petitioner had not demonstrated that no unjust enrichment would result if his refund claim was allowed. In view of the pendency of the writ petition, no further proceedings are seen to have been taken by the petitioner against Ext. P10 order. I have heard Sri. V.B. Unniraj, the learned counsel appearing on behalf of the petitioner as also Sri. Thomas Mathew Nellimoottil, the learned Senior Standing counsel for the respondents.

2. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that in Ext. P10 order, the 3rd respondent rejects the refund claim preferred by the petitioner for the sole reason that the petitioner had only produced a Chartered Accountant''s certificate to substantiate his claim with regard to the absence of unjust enrichment and had not produced any further document to show the absence of unjust enrichment. Other than stating that the Chartered Accountant''s statement was silent about the documents that were verified by him in order to come to the conclusion that the incidence of duty had not been passed on, the 3rd respondent does not state any other reason as to why the claim of the petitioner for refund cannot be entertained. While preferring a claim for refund, it is for the claimant to establish through proper documents that the burden, of the amount claimed by way of refund, has not been passed on to any third person through any subsequent transaction of the claimant. While a certificate issued by a Chartered Accountant or a Cost Accountant would normally suffice to discharge that burden, if the revenue authorities have any doubt with regard to the genuineness of the certificate or the correctness of it, it is for them to insist on further documents from the claimant to support the certificate issued by the Chartered Accountant or the Cost Accountant. In the instant case, in Ext. P10 order, while the 3rd respondent has chosen not to rely on the certificate of the Chartered Accountant produced by the petitioner, it is evident that the petitioner was not given any further opportunity to produce documents to substantiate the correctness of the said certificate, on the 3rd respondent entertaining a doubt regarding the correctness of the said certificate. I am of the view that if the 3rd respondent had any doubt regarding either the genuineness of the certificate or the correctness of the contents therein, it should have informed the petitioner of the same and given the petitioner an opportunity of producing additional documents to substantiate his claim for refund. That procedure not having been adopted by the 3rd respondent, I am of the view that Ext. P10 order passed by him cannot be legally sustained. Resultantly, I quash Ext. P10 order of the 3rd respondent and direct him to consider the matter afresh after affording the petitioner an opportunity of being heard. It will be open to the petitioner to produce supporting materials to substantiate his claim for refund and in particular to establish that by the grant of refund to him, he will not be unjustly enriched. The 3rd respondent shall pass fresh orders in the matter within a

period of three months from the date of receipt of a copy of this judgment, after hearing the petitioner, for which due notice shall be given to the petitioner. With these directions, the writ petition is disposed.