(1987) 12 CAL CK 0026

In the Calcutta High Court

Case No : Matter No. 186 of 1987

Calcutta Chemical Co. Ltd. APPELLANT

Vs

Assistant Collector of Central Excise, Calcutta C-Division and Others RESPONDENT

Date of Decision : 14-12-1987

Acts Referred:

Central Excise Rules, 1944 — Rule 9, 9B, 9B(5)
Central Excises and Salt Act, 1944 — Section 11(1), 11B, 11B(1)

Citation : (1993) 44 ECR 112 : (1988) 34 ELT 628

Hon'ble Judges : Pratibha Bonnerjea, J

Bench : Single Bench

Judgement

Pratibha Bonnerjea, J.—In this writ petition the petitioner has challenged the "order dated 25th August, 1986 being ''Annexure ''E'' to the petition passed by the respondent No. 1.

2. The short history of the case is that the petitioner is a manufacturer of "Margo Soap". The petitioner paid provisional excise duty on 30th June, 1984. The excise duty payable was ascertained during the period between 11th September, 1984 and 27/30 October, 1984 and the ascertained sum was found to be Rs. 36,08,161.14. The petitioner was allowed to pay the said sum by 12 instalments as mentioned at page 37, being Annexure ''B'' to the petition. Subsequently, on scrutiny of the demand notices, the petitioner found that by mistake an excess sum of Rs. 5,97,343.98 was demanded and realised by the Central Excise Authorities, - respondents No. 1 and 2 herein. The petitioner states that last three instalments i.e. rupees three lakhs; was paid on 15.1.1986 rupees three lakhs was paid on 31.1.1986 and Rs. 8,161.14 was paid on. 14.3.1986.

3. On 28th May, 1986, the petitioner made an application for refund of the excess amount realised by the respondents No. 1 and 2 u/s 11B of the Central Excise Act, 1944. Upon receipt of that application a show cause notice was served by the respondent No. 1 on the petitioner on 2nd July, 1986 asking the

petitioner to show cause why its claim should not be treated as barred by limitation. } The petitioner submitted its reply on 8th July, 1986. By the order dated 25th August, 1986 the respondent No. 1 held that the petitioner''s claim for refund was barred by limitation. The operative portion of that order is as follows :-

"The main question for determination in the present'' case is whether the relevant date from which the period of six months u/s 11B should be computed will be the date when a particular instalment was paid or when the provisional assessments were finalised and demand raised by the proper officer. It is an accepted fact that the assessments in the instant case were kept provisional under Rule 9(b) of Central Excise Rules, 1944 which were finalised between 11.9.1984 and 22/3.10.1984. As such for the purpose of computation of six months period for filing refund claim u/s 11B of the said Act the relevant date would be the date of raising demand of duty short paid after the adjustment of the duty already paid."

This order has been challenged in this writ petition.

4. Sub-rule (5) of Rule 9B of the Central Excise Rules, 1944 provides as follows :-

"When the duty leviable on the goods is assessed finally in accordance with the provisions of these rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisionally assessed falls short of, or is in excess of the duty finally assessed, the (assessee) shall pay the deficiency or be entitled to a refund, as the case may be."

Now the question is from which date the limitation would start running. Sub-section (1) of Section 11B provides as follows :-

"Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months (from the relevant -date)."

5. The relevant date has been explained in Explanation 5(B) of Section 11B of the Act. We are concerned here with (e) & (f) of Explanation 5(B) of Section 11B.

"(e) in a case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof."

"(f) in any other case, the date of payment of duty."

6. This is an admitted case here that the provisional payment was less'' than the actual amount payable. Further amount was found payable after final assessment and payments were made by instalments between the period 9th March, 1985 and 14th March, 1986. During this period the excess amount demanded and paid was found out. Obviously, the payments were adjusted against the claim as and when the instalments were paid by the petitioner. Therefore last three instalments were adjusted by the respondents No. 1 and 2 between 15th

January, 1986 and 14th March, 1986 when payments were received by them.

7. An application was made by the petitioner on the 28th May, 1986 which is within the period of six months from the dates of adjustment as aforesaid or from the respective dates of payment. In that view of the matter, the decision of the respondent No. 1 on the point of limitation is absolutely contrary to the letters of law as set out above. The facts of the case will attract the provisions of either (e) or (f) set out above. The finding that limitation is expected to start from the date of raising the demand of duty as held by the respondent No. 1 is certainly perverse because it is against the express provisions of law. In my opinion, even if (e) is not attracted, the facts of the case certainly come within the preview of the provisions in (f) of the Act.

8. In that view of the matter, the order dated 25th August, 1986 being Annexure ''E'' to the petition is set aside and/or quashed. The respondents No. 1 and 2 are directed to refund to the petitioner a sum of Rs. 5,97,343.98 within three months from date.

9. Mr. Mitra, appearing for the respondents prays for stay. His prayer for stay is refused.

10. There will be no order as to costs.

