

(1982) 07 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 5202 of 1981

Canara Rubber Products Pvt. Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise and Others

RESPONDENT

Date of Decision : 29-07-1982

Acts Referred:

Central Excise Act, 1944 — Section 11 B, 11 B (2)
Central Excise Rules, 1944 — Rule 11

Citation : (1983) 3 ECR 51D : (1983) 12 ELT 97 : (1983) 1 KarLJ 289

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : G. Chandrakumar, for the Appellant; K. Shivashankar Bhat, Central Govt. Advocate, for the Respondent

Judgement

1. This petition is disposed of by the following order at the stage of preliminary hearing after notice to respondents and after hearing the Counsel for parties.

2. The facts leading to this petition briefly stated are as follows :

3. The petitioner is a company registered under the Companies Act, 1956, having its registered office at Mangalore. It manufactures tread rubber out of natural rubber which is supplied to it by the Forest Department of the Government of Karnataka. The tread rubber manufactured by the petitioner-company is liable to excise duty under the Central Excises and Salt Act, 1944, (hereinafter referred to as the Act). It pays levy under tariff item No. 16A(2) of the schedule to the Act. By notification No. 54/1979 dated 1-3-1979 the Government of India fixed the levy at 35 per cent ad valorem with effect from 1-3-1979 as against 36 per cent which was the earlier rate of levy. In the result, the petitioner-company was paying duty at 35 per cent on its product. However, by further notification No. 186/1979 the Government of India withdrew the earlier notification No. 54/1979. In the result, the petitioner was called upon by the 1st respondent-Assistant Collector of Central Excise, I.D.O. Mangalore, to pay a duty at 36 per cent ad valorem on the company's product inasmuch as the withdrawal of the

notification amounted to revival of the earlier rate of levy. The petitioner-company wrote a letter soon thereafter to the Collector of Central Excise, Karnataka, Bangalore, asking for clarification, by a letter dated 29-7-1980. On behalf of the Collector it was clarified that the excise duty leviable on the product of the company was 35 per cent ad valorem plus 6 per cent excess duty. In that connection attention was drawn to Trade Notice No. 52/1979 dated 1-3-1979 for information of the petitioner-company. On receipt of that clarification, the petitioner-company which had paid ad valorem duty at 36 per cent with effect from 10-5-1979 upto 31-7-1980 demanded refund of excess of 1 per cent paid by it. The demand was made to the 1st respondent-Assistant Collector of Central Excise, Mangalore. Thereupon, the 1st respondent issued a show cause notice to the petitioner-company calling upon it to show cause why the claim for refund should not be disallowed as barred by limitation prescribed in Rule 11 of the Central Excise Rules (hereinafter referred to as the Rules) framed under the Act.

4. The petitioner showed cause pointing out that the payment was made in excess of the duty as a result of a mistake of law and therefore Rule 11 of the Rules was not attracted to the facts of the case. He further drew the attention of the 1st respondent-Assistant Collector of Central Excise, Mangalore, that the withdrawal of the notification No. 54/1979 by notification No. 186/1979 by the Government of India did not really alter the position inasmuch as the Finance Act of 1979 of the Government of India had clearly provided for levy of excise duty at 35 per cent only. In spite of the cause being shown, the Assistant Collector of Central Excise, Mangalore, by his order dated 26-2-1981 rejected part of the claim for refund on the ground, the same was barred by limitation having regard to the provisions contained in Rule 11 of the Rules.

5. It is useful to reproduce the operative portion of the order as the other facts are not in dispute.

"I, therefore reject the refund claim of M/s. Canara Rubber Products Pvt. Ltd., Mangalore, for Rs. 72,584.59 (Rupees Seventy two thousand and five hundred eighty four and fifty nine paise) as time barred under Rule 11 read with section 11B(2) of Central Excises and Salt Act, 1944, and admit the claim for Rs. 49,916.14 (Rupees Forty nine thousand nine hundred sixteen and paise forty one only) out of a total claim of Rs. 1,22,501/-."

6. Shri G. Chandrakumar, learned Counsel for the petitioner-company, has contended that payment made by mistake of law of a tax cannot be retained by the authorities so collecting notwithstanding any technicalities such as Rule 11 of the Rules, as such retention would in itself amount to levy of duty or tax without the authority of law. This appears to have been the consistent view taken by the High Courts and the Supreme Court in *Patel India Private Limited Vs. Union of India and Others*,

7. In somewhat similar circumstances in the case of *I.T.C. Ltd. and Others v. Union of India* [1981 ELT 690] following the decision in *Patel India's Case* by the

Supreme Court, I took the view that Rule 11 of the Rules had no application in relation to the claim of refund based on duty having been paid under a mistake of law. I also took the view that the Revenue had no right to retain taxes of any kind illegally levied and collected if they were not authorised by law. Therefore, persons claiming refund of such duty cannot be denied the remedy under Art. 32 or under Art. 226 of the Constitution. Similarly, is the view taken by many other High Courts in India.

8. It will be useful to refer to a very recent decision rendered by a Division Bench of the Andhra Pradesh High Court in the case of *Kesoram Cements, Basantnagar v. Union of India and Others* [1981 ELT 214]. The learned Judges in the aforementioned case have also followed the earlier ruling of the Supreme Court and affirmed the views of the other High Courts and held that a duty if collected illegally, refund of such duty cannot be denied by the Department on the ground that assessee had passed on the same to the consumer as there was no such condition in Section 11-B of the Act. The contention that if refund is granted it would result in unjust enrichment of the assessee was not sustainable in law. They further held that the duty paid under mistake of law was recoverable from the Government u/s 72 of the Contract Act. They also held that if the duty was collected without the authority of law, provisions of Rule 11 of the Rules cannot be invoked by the Union Government.

9. In these circumstances, when the facts of the case are not in dispute, the impugned order of the 1st respondent-Assistant Collector of Central Excise, Mangalore, is patently illegal and suffers from patent errors of law. Such being the case, notwithstanding the fact that the Act and the Rules framed therein provide machinery for refund, appeal and revision against such orders, this Court exercising jurisdiction under Art. 226 of the Constitution should not needlessly drive the petitioner-company and the like of it, to protracted proceedings to enforce its legitimate rights.

10. In the result, the impugned order is quashed which is at Annexure-M to the petition and further a direction will issue to refund that amount which the order impugned has disallowed in the sum of Rs. 72,584-59. Rule will accordingly issue and be made absolute. No costs.