

(1986) 01 GUJ CK 0015
In the Gujarat High Court

Case No : First Appeal No's. 746 and 846 of 1975

Chemicoat Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-01-1986

Acts Referred:

Limitation (Amendment) Act, 1963 — Article 113, 24, 92
Limitation Act, 1908 — Article 120, 62

Citation : (1986) 7 ECC 236 : (1986) 25 ELT 528

Hon'ble Judges : J.P. Desai, J; D.C. Gheewala, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; S.D. Shah, Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.P. Desai, J.—These two appeals, one filed by the original plaintiff and the other filed by the original defendant, arise out of the same judgment and decree passed by the Civil Judge, Senior Division, Vadodara in Special Civil Suit No. 321 of 1973 whereby he partly decreed the suit of the plaintiff, these appeals are, therefore, heard together and are being disposed of by this common judgment.

2. The facts leading to the filing of these two appeals may be briefly stated as follows : -

The plaintiff is carrying on the business of manufacturing metallised yarn at Kalki Road, Atladara, District Vadodara. The excise authorities at Vadodara started levying and collecting duty on metallic (metallized) yarn under tariff item No. 18 of the First Schedule to the Central Excises and Salt Act, 1944 from 19th October, 1968. They issued demand notice for the period from 1st December, 1965 to 18th October, 1968. The plaintiff, therefore, filed a special civil application in this court, being Special Civil Application No. 509 of 1969 against the Union of India and excise authorities challenging the decision of the local officers to levy and collect duty on such yarn. The special civil application was

allowed by this court on 22nd June, 1971 and the two demand notices served upon the plaintiff were quashed and the Union of India and excise authorities were restrained from levying and collecting duty on the said metallic yarn on the ground that they did not fall within tariff item No. 18. One Special Civil Application No. 780 of 1970 was also filed by one M/s. Vac Met Corporation of Surat raising the same contention with regard to such levy and this court allowed that special civil application also. It may be mentioned that the said special civil application was decided earlier and relying upon the decision given in special civil application, the special civil application of the present plaintiff was allowed. During the pendency of the special civil application before this court, the plaintiff paid duty under protest. On the said special civil application having been decided in favour of the plaintiff, the plaintiff requested the excise authorities to refund the amount which was collected by them during the pendency of the special civil application. The Assistant Collector of Central Excise, Vadodara informed the plaintiff by his letter dated 9th April, 1973 that the plaintiff was not entitled to any such refund other than Rs. 85,000 which was ordered to be refunded by this High Court in the special civil application till the matter was finally decided by the Supreme Court. The plaintiff, therefore, filed the present suit for refund of the amount of duty paid during the period of pendency of the special civil application in the High Court. It may be mentioned here that the Union of India "made an application before the Supreme Court for grant of stay of the operation of the order passed by this court in the special civil application in favour of the plaintiff. The Supreme Court directed that the present plaintiff will be entitled to withdraw the amount of Rs. 56,000 on furnishing security to the satisfaction of the Registrar of this Court. The plaintiff also alleged in the plaint that the very same excise authorities had granted refund to M/s. Vac Met. Corporation, while the said authorities were refusing to grant refund to the plaintiff even though the plaintiff and the said Vac Met Corporation were similarly statute. On these grounds the plaintiff filed the present suit for recovery of the amount paid by the plaintiff under protest to the excise authorities.

3. The defendant resisted the suit of the plaintiff and raised a contention that the suit for refund was not maintainable. The defendant also contended that the suit was barred by limitation.

4. The trial court held that the plaintiff was entitled to refund but held that the amount paid by the plaintiff during the period prior to three years before the filing of the suit cannot be refunded because the claim was barred by limitation, the suit being governed by Article 24 of the Limitation Act, 1963. The trial court accordingly partially decreed the suit of the plaintiff and directed a decree for Rs. 1,19,202 with interest at 6% on Rs. 1,01,021.78 p. from the date of the suit till realization.

5. Being dissatisfied with the judgment and decree passed by the trial court, the original plaintiff has filed First Appeal No. 746 of 1975 challenging the finding of the trial court that the suit for the remaining amount was barred by limitation.

The Union of India, on the other hand, has filed First Appeal No. 846 of 1975 challenging that part of the decree by which the trial court granted refund, contending that the suit for refund was not maintainable.

6. The learned Advocate Mr. K.H. Kaji appeared for the original plaintiff, while the learned Additional Standing Counsel Mr. S.D. Shah appeared for the original defendant in both these appeals.

7. The question which was seriously agitated before us was about limitation. The question of limitation has been dealt with by the learned trial Judge at length. Various authorities were cited before him. The learned trial Judge, relying upon the decision of the Supreme Court reported in *A. Venkata Subba Rao Vs. State of Andhra Pradesh*, decided the question of limitation against the plaintiff. The learned Advocate Mr. S.D. Shah who appeared for the original defendant in these appeals also relied upon this decision of the Supreme Court in support of his contention that the suit for refund of the amount paid more than three years prior to the filing of the suit was barred by limitation, and therefore, the learned trial Judge was not in error in holding that the suit for that amount was barred by limitation. The question that arose before the Supreme Court was as to which article of the Limitation Act will apply to a suit for refund of such duty which is ultimately found to be illegal. The Supreme Court held that Article 62 of the Limitation Act of 1908 applied to such a suit. Article 24 of the Limitation Act, 1963 is the corresponding article and, therefore, according to this decision of the Supreme Court, Article 24 of the Limitation Act, 1963 will apply to this suit. Article 24 of the Limitation Act, 1963 which corresponds to Article 62 of the old Limitation Act, 1908 provides for a period of three years for filing a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use and the time begins to run from the date the money is received. The Supreme Court held that when duty is paid which is ultimately found to be illegal, then the period of limitation for filing a suit for refund will be three years as provided by Article 62 of the Limitation Act, 1908. The Supreme Court took the view that when money is paid towards the duty which is ultimately found to be illegal, it is deemed to be money received by the defendant for the plaintiff's use, and therefore, the period will start from the time the money is received. In view of this decision of the Supreme Court, it cannot be disputed that the suit for refund of such amount will be governed by article 24 of the Limitation Act, 1963 and that the period will run from the date the duty is paid.

8. The learned Advocate Mr. Kaji, however, urged before us that in the present case the special civil application was already pending before this court in which the levy in question was under challenge and that, the special civil application was decided on 22nd June, 1971, and, therefore, Article 24 of the Limitation Act will not apply to the present case. He relied upon the following observations made by the Supreme Court in the above case at para. 62 at page 1794 :-

"Lastly, if the right to refund does not arise immediately on receipt by the

defendant but arises by reason of facts transpiring subsequently, Article 62 cannot apply, for it proceeds on the basis that the plaintiff has a cause of action for instituting the suit at the very moment of the receipt."

9. Relying upon the above observations of the Supreme Court Mr. Kaji urged that as the special civil application was decided by the High Court in the year 1971 after the payments were made, the cause of action arose to the plaintiff only then and not when the amounts were paid. He urged that in view of these facts, article 24 of the Limitation Act, 1963 will not apply to the present suit. In the present case, it is an admitted position that the payments which are held to be barred by limitation by the trial court were made during the pendency of the special civil application before this court. The very contention of the plaintiff about the levy in question was the subject matter of the special civil application and till the levy was held to be illegal by the High Court, the plaintiff could not have claimed refund. Even if the plaintiff has filed a suit for refund, the defence of the Union of India would have been that the matter was sub judice, and therefore, the civil court cannot decide that question. In other words, the Union of India would have contended that the suit was premature. In fact, we may mention here that even in the present suit the Union of India has taken up the stand that the plaintiff was not entitled to claim the refund because the matter was pending before the Supreme Court. The question of limitation, of course, cannot be decided against the defendant because the defendants have taken up such a contention in the suit. It cannot be decided against the defendant simply because the Assistant Collector wrote a letter to the plaintiff even before the filing of the present suit that the plaintiff was not entitled to refund because the matter was pending before the Supreme Court. But it is clear that the plaintiff could not have claimed refund till the question which was pending before this court was decided in the special civil application. The plaintiff, in other words, had no cause of action for instituting a suit for refund of this amount till the special civil application was decided by this court. The decision of this court in the special civil application is an event which transpired subsequently after the payments were made by the plaintiff, and therefore, the suit of the plaintiff will not be governed by article 24 of the Limitation Act, 1963. The Supreme Court referred to a decision of the Madhya Pradesh High Court reported to Gobind Singh v. State of Madhya Pradesh AIR 1961 MP 321. The suit in that case was for refund of tax overpaid. The question was whether Article 62 or Article 120 of the old Limitation Act of 1908 applied. The Madhya Pradesh High Court held that the right to claim refund accrued to the" plaintiff only after the completion of the assessment, and therefore,, the suit was not governed by Article 92. The Supreme Court, after referring to the above decision of the Madhya Pradesh High Court, held that the said decision did not assist the appellant before the Supreme Court. But it is pertinent to note that the Supreme Court did not disapprove of the decision given by the Madhya Pradesh High Court. In fact, the observations made at para. 62 which are reproduced earlier go to show that the Supreme Court was inclined to approve the view taken by the Madhya Pradesh High Court.

Applying the test laid down even by the Supreme Court in the above case, we are inclined to hold that the suit of the plaintiff will not be governed by article 24 of the Limitation Act of 1963. It will be governed by Article 120 of the old Limitation Act of 1908 which corresponds to Article 113 of the Limitation Act, 1963. It is a residuary article which provides a period of three years and the period of limitation starts from the time the right to sue accrues. In the present case, we can say that the right to claim refund accrued to the plaintiff when this court held in the special civil application in the year 1971 that the levy was illegal, and therefore, the suit of the plaintiff for the whole of the amount paid during the pendency of the said special civil application was within limitation. In our view, no part of the claim of the plaintiff is barred by limitation. In view of this, the plaintiff cannot be non-suited for a part of the amount claimed in the suit on the ground that it was barred by limitation.

10. So far as the other contentions of the Union of India are concerned, we do not find any substance therein. The contentions of the Union of India that the suit was not maintainable and that the civil court had no jurisdiction deserve to be stated for being rejected. When the plaintiff had to pay the amount under protest, the plaintiff had no other remedy than to file the present suit for refund after the authorities refused to refund the amount. The plaintiff also cannot be non-suited on the ground that the decision of this court in special civil application is under challenge before the Supreme Court.

11. It was contended by the learned advocate Mr. S.D. Shah that the plaintiff should be non-suited on the ground of unjust enrichment. This contention deserves to be stated for being rejected because Natvar Rao, Ex. 22, examined on behalf of the plaintiff has specifically stated in his deposition that the excise duty charged by the defendant from the plaintiff for the suit period has not been collected by the plaintiff from the customers or from the distributors. He has further stated that even on the day he gave deposition in the month of April 1975, they were not charging excise duty on metallic yarn. He has been cross-examined, but nothing substantial has been brought out in his cross-examination which will show that what he stated was not true. It was not suggested to him that they were in fact charging excise duty on metallic yarn or that they had collected the same from the customers or distributors during the suit period. In view of this, we find no substance in this contention advanced by Mr. Shah.

12. We may also mention here that Civil Appeal No. 924 of 1971 with Civil Appeals Nos. 1 of 1972 and 1298-1303 of 1975 were disposed of by a common order by the Supreme Court on 6th August, 1985 whereby the Supreme Court confirmed the judgment delivered by this Court in Special Civil Application No. 509 of 1969 and other Special Civil Applications whereby it was held that excise duty was not chargeable on metallic yarn. The Supreme Court also thus confirmed the view taken by this court in Special Civil Application No. 509 of 1969 whereby this court held that the levy of the excise duty on metallic yarn was illegal.

13. As a result of the aforesaid discussion, First Appeal No. 746 of 1975 filed by the original plaintiff deserves to be allowed, while First Appeal No. 846 of 1975 filed by the Union of India deserves to be dismissed. Now, the plaintiff has claimed Rs. 3,15,606.01 as the principal amount. The plaintiff has also claimed interest on the principal amount from 20.8.71 to 31.10.73. It appears from the record that Rs. 41,642.42 were paid by the plaintiff during the period from September 1971 to March, 1972. In view of this, interest cannot be claimed on this amount from 20.8.1971. Interest can be claimed only from the date of payment and not from 20.8.71. Rs. 2,73,964 were paid prior to 20.8.1971 and, therefore, the plaintiff is entitled to interest at 9% per annum on that amount from 1.9.1971 to 31.10.1973, which comes to Rs. 53,422.90 p.

14. Different amounts were paid during different months as detailed below and hence interest is payable on those amounts from those dates upto 31.10.1973. The details of those payments and the respective amount of interest worked out thereon are as follows :

Period	Principal amount	* Interest amount	From 1.10.71 on 7148.96	1340	From 1.11.71 on 5903.72	1062	From 1.12.71 on 6291.78	1062	From 1.1.72 on 1992.77	330	From 1.2.72 on 3916.40	615	From 1.3.72 on 7727.79	1160	From 1.4.72 on 8661.00	12.34	-----	-----	41642.42	6827
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The plaintiff, therefore, entitled to Rs. 6,827 as interest on Rs. 41,642.42 p. as detailed above. The total amount of interest which the plaintiff is entitled upto the date of the suit, therefore, comes to Rs. 60,249.98 p. The plaintiff is, therefore, entitled to a decree for Rs. 3,15,606.01 p. towards the principal amount and Rs. 60,249.98 p. as interest. The plaintiff has, however, claimed Rs. 58,521.09 only as interest on the total amount. The plaintiff is entitled to that amount only as interest. The total amount which the plaintiff is entitled to recover thus comes to Rs. 3,74,127.10 p. (Rs. 3,15,606.01 + Rs. 58,521.09 p.). The plaintiff is entitled to interest on the principal amount at 6% per annum from the date of the suit till realization.

15. As "a result of the aforesaid discussion, First Appeal No. 846 of 1975 filed by the Union of India is hereby dismissed with costs.

16. First Appeal No. 746 of 1975 filed by the original plaintiff is hereby allowed, the decree passed by the trial court is hereby modified and the defendant - Union of India is hereby directed to pay to the plaintiff Rs. 3,74,127.10 p. with full costs of the suit and interest on the principal amount of Rs. 3,15,606.01 p. at 6% per annum from the date of the suit till realization. The respondent to bear their own costs of this appeal and pay those of the appellant.