

(1995) 12 MAD CK 0036

In the Madras High Court

Case No : Writ Appeal No. 1419/95 and C.M.P. No. 18613/95

Collector of Central Excise, Madras

APPELLANT

Vs

Grasim Industries Ltd.

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 11BB

Citation : (1996) 53 ECC 51 : (1996) 82 ELT 462

Hon'ble Judges : K.A. Swami, C.J.;Janarthanam, J

Bench : Division Bench

Advocate : Shri K. Jayachandran, ACGSC, for the Appellant; Shri P. Aravind Dattar, for the Respondent

Judgement

K.A. Swami, C.J.—At the stage of admission, the respondent has taken notice. As the appeal lies in a narrow compass, it is admitted and

heard for final disposal.

2. This appeal is preferred against the order dated 23-11-1995 passed by the learned single judge in W. P. 4289 of 1995. Learned single Judge

has directed that a sum of Rs. 27,74,339/- should be refunded to the respondent with interest at 15% per annum to the respondent.

3. Facts necessary for the purpose of deciding the question as to whether the direction issued by the learned single Judge is sustainable or not, are

no more in dispute. On 27-5-1993, the Assistant Collector of Central Excise, Ranipet rejected the claim made by the respondent that it would be

entitled to a concessional rate of excise duty. The petitioner's claim was that the difference between the concessional rate and the excise duty paid

at 15% should be refunded. Aggrieved by the said order, the respondent preferred appeal in Appeal 34/93(M) before the Collector of Customs,

who by the 1st order dated 14-12-1993 remitted the matter to the Original Authority, viz., Assistant Collector, Ranipet, to decide the matter

afresh, in the light of the observations contained in the appellate order. After remand, the Assistant Collector of Ranipet, by the order dated 10-6-

1994 rejected the claim of the respondent. However, in the appeal preferred by the respondent in Appeal 226/94(M), the Collector of Appeals by

the order, dated 14-10-1994 has allowed the appeal and held that the respondent is entitled to concessional rate of excise duty and therefore, the

difference between the concessional rate and the 15% of excise duty should be refunded. The validity of this order has been challenged by the

appellant before the Customs, Excise and Gold (Control) Appellate Tribunal in Appeal 26 of 1995 and the same is pending.

4. Therefore, under these circumstances, the question for consideration is, whether there shall be a direction to refund the difference of the amount

between the concessional rate and 15% of the excise duty.

5. We are of the view that in the event the appeal preferred by the appellants herein before the CEGAT is allowed, the respondent will not be

entitled to claim any refund. Further, even if the appeal is dismissed, the refund cannot straightaway be ordered, without examining the case as per

the provisions contained in Section 11B of the Central Excises and Salt Act. However, it is submitted by Shri Dattar, learned counsel for the

respondent that the question of application of Section 11B will not arise. This question shall also have to be decided in the appeal. Under these

circumstances, we are of the view that there cannot be a direction to refund the amount as in the event, the respondent is entitled to have the

difference of the duty amount refunded it would be entitled to the interest as per the provisions contained in Section 11BB of the Central Excises

and Salt Act. Further, we are of the view that the decision of a Division Bench of this Court in The Collector of Central Excise, Tiruchirappalli and

Another v. TVS Whirlpool Ltd. represented by its Managing Director (Writ Appeal 680 of 1994, dated 27th April, 1994) [reported in 1994 (74)

E.L.T. 496 (Mad.)] : Collector of Central Excise, Tiruchirappalli Vs. TVS Whirlpool Ltd., applies to the case on hand, in which it has been held as

follows :-

In this case, the right to seek refund also depends upon the decision to be

rendered by the CEGAT in the appeal preferred by the respondent

herein. It is submitted that in the event the appeal is allowed, there is no question of refund. If it is dismissed, the respondent in the appeal who is

the writ petitioner, is entitled to seek refund as per the provisions contained in Section 11B of the Act. In view of this, we modify the order of the

learned single Judge in the following terms :-

(a) the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi is directed to decide the Appeal E/5521/91-A and the connected

appeals, within two months from the date of receipt of a copy of this judgment.

(b) Within one month from the date of the order of the Tribunal, the request of the respondent/writ petitioner for refund, if it becomes necessary as

it depends upon the order of the CEGAT, shall be considered. If the application submitted by the respondent/writ petitioner is not in the prescribed

form, it is now open to it to make such an application and the application for refund shall be considered in terms of Section 11B(2) of the Act.

(c) If for any reason, neither the appeal nor the application for refund is considered and disposed of, within 3 months as stated above, the

respondent/writ petitioner shall be entitled to interest from today at 12% on the amount which will be found refundable. If on the contrary it is

disposed of, there will be no liability to pay the interest.

6. For the reasons stated above, the appeal is allowed. The order dated 23-11-1995 passed by the learned single Judge in W. P. 4289 of 1995 is

set aside. The writ petition is dismissed with no order as to costs. However, the CEGAT is directed to decide the appeal, within a period of 2

months. The C. M. P. is also disposed of. However, there will be no order as to costs.