

(1994) 04 MAD CK 0015
In the Madras High Court
Case No : W.A. No. 680 of 1994

Collector of Central Excise, Tiruchirapalli	APPELLANT
Vs	
TVS Whirlpool Ltd.	RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 11B(2), 11B(3)

Citation : (1996) 53 ECC 49 : (1994) 74 ELT 496

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

Bench : Division Bench

Advocate : Shri K. Jayachandran, ACGSC, for the Appellant; Shri Sriram Panchu, for the Respondent

Judgement

K.A. Swami, C.J.—As the respondent has put in appearance, we have heard both sides for the final disposal of this appeal itself.

2. The appeal is preferred against the order dated 4-2-1994 passed in writ petition 14244 of 1992. Learned single Judge has allowed the writ

petition in the following terms :-

From the above extract in the counter-affidavit, it will be seen that there is no averment to the effect that if the amount is paid now to the

petitioner, it will be difficult for the respondents in the event the Department's appeal before the Tribunal is allowed, to recover the same. The

Tribunal dismissed the stay application, holding that the lower appellate authority allowed the appeal of the petitioner applying its earlier order.

There is no suggestion that against the earlier order, any further action was taken to get the same reversed.

However, learned counsel appearing for the Revenue submitted that the Department may be given the right to go into the question of unjust

enrichment after giving notice to the petitioner before ordering the refund. For this course, there can be no objection on the part of the petitioner.

Accordingly, after going into the question of unjust enrichment, the respondents will refund the amount in question within three (3) months from this date. The writ petition is allowed accordingly. No costs.

It is not disputed before us that the observation contained in the order that the Tribunal has proceeded on the basis that there was no appeal

preferred against the earlier order, is not correct, because there is such an appeal preferred before the CEGAT and that the appeal is pending.

Further, learned single Judge has directed that subject to unjust enrichment, the application for refund be considered.

3. We may point out here that as far as the refund of excise duty is concerned, it is Section 11B of the Central Excises and Salt Act, 1944, which

governs the matter. Sub-section (3) of Section 11B specifically states that :-

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any

other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in

sub-section (2).

Therefore, even if there is an order for refund passed by any Court or by any Appellate Tribunal, that shall have to be considered only in terms of

Section 11B. Therefore, the party seeking refund has to make an application in the prescribed form and that such an application has to be

considered in accordance with the provisions contained in sub-section (2) of Section 11B of the Central Excises and Salt Act, 1944.

4. We may also point out here, as it is brought to our notice that in some cases, whenever a party has submitted a requisition for refund, it is not

considered on the ground that it is not in the prescribed form. As the rule prescribing a form is a rule of procedure, it shall not be enforced in such a

manner so as to defeat substantive right of a party to seek refund. It is necessary to remember that rules of procedure are the hand-maid of justice.

In such cases, it is just and appropriate and also necessary on the part of the Department to inform the concerned party to submit an application

for refund in the prescribed form, in the event the application or the letter submitted by the party seeking refund is not in conformity with the

prescribed form.

5. 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 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. The writ appeal is disposed of accordingly. However, there shall be no order as to costs.