

(2001) 01 GUJ CK 0028

In the Gujarat High Court

Case No : Special Civil Application No. 243 of 2001 Application No. O/2894 of 2000

Commissioner of Customs and Central Excise

APPELLANT

Vs

Gujarat State Fertilizer and Chemicals Ltd.

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 75 ECC 17

Hon'ble Judges : R.R. Tripathi, J;B.C. Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.C. Patel, J.—Heard learned Advocate Mr. Asim Pandya for the petitioner.

Facts in a nutshell, as it appears from the compilation, are as under:

2. The respondent herein (hereinafter referred to as GSFC) imported consignments of Phosphoric Acid and claimed benefit of Notification No. 235 of 1989. Bills of Entry were filed by the respondent GSFC which were provisionally assessed at the rate of 15%. The Bills of Entry relate to imports made during the years 1989 and 1990. On 19.4.1991, Assistant Commissioner of Customs, Jamnagar decided the matter in favour of GSFC and held that consequential refund be granted to GSFC in respect of the cases where the goods were assessed to duty at the rate of 15% ad-valorem. In view of the aforesaid order, GSFC filed a refund claim for an amount of Rs. 1,48,41,113 on 4.6.1991. The Revenue issued show cause notice dated 31.5.1995 proposing to deal with the refund claim as per Section 27 of the Act. By order dated 17.8.1995, the Assistant Commissioner allowed the refund claims subject to transferring the refund amount to the Consumer Welfare Fund. GSFC preferred appeal before the Commissioner of Central Excise & Customs (Appeals), Ahmedabad, and by order dated 9.12.1998, confirmed the order dated 17.8.1995 passed by the Assistant Commissioner transferring the refund amount to the Consumer Welfare Fund.

Aggrieved by this order, GSFC preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai (Bench No. 2) (hereinafter referred to as the CEGAT), and by order dated 24.11.1998, CEGAT allowed the appeal and set aside the order dated 9.12.1998, CEGAT directed the Commissioner to apply the principles of *Solar Pesticides Pvt. Ltd. Vs. Union of India (UOI)*, and to decide the eligibility of the appellant for refund according to law after considering the evidence that may be produced before him regarding use of the goods and manufacture of fertilizer. Accordingly, the Commissioner of Appeals, Ahmedabad by order dated 27.5.1999 held that GSFC is entitled for the refund. Against this order, the Revenue preferred appeal before the CEGAT which was dismissed by CEGAT on 1.11.1999.

3. It is the contention of the Revenue that in the meanwhile, the Supreme Court reversed the decision of the Bombay High Court in the case of *Solar Pesticides* and held that the doctrine of unjust enrichment will apply even to the goods captively consumed. The Revenue therefore preferred an appeal before CEGAT on 22.5.2000 for "rectification of the mistake" which came to be rejected by CEGAT on 23.8.2000. The Revenue again preferred another application before the CEGAT and in that application the CEGAT has directed the Revenue to grant refund and to report compliance by 25.1.2001.

4. Reading the order dated 24.11.1998, it is clear that at the relevant time before the CEGAT, the contention of the Revenue was that GSFC has not produced any evidence to show that the goods imported have been captively consumed by GSFC in its factory, to which advocate for GSFC stated that sufficient evidence shall be produced before the Commissioner (Appeals) in support of its contention that the goods have been so used. CEGAT therefore directed the Commissioner to consider the evidence that may be produced before him and to pass appropriate orders. GSFC produced the evidence and relying thereon, the Commissioner held that GSFC is entitled for the said refund. Now, at this belated stage, it is the contention of the Revenue that in the meanwhile, the Hon'ble Supreme Court has held that the doctrine of unjust enrichment will apply even to goods captively consumed, and, therefore, GSFC is not entitled to any refund.

5. We intend to dispose of this petition on the ground of gross delay and laches, without entering into the questions as to whether GSFC is entitled to refund on goods consumed or not, or the effect of a judgment of the Apex Court in the intervening period.

6. The Bills of Entry relate to imports made during the years 1989 and 1990. GSFC filed a refund claim on 4.6.1991. Initially on 19.4.1991, Assistant Commissioner of Customs, Jamnagar decided the matter in favour of GSFC and held that consequential refund be granted to GSFC. Thereafter, after various rounds of litigation, the Commissioner of Appeals, Ahmedabad by order dated 27.5.1999 held that GSFC is entitled for the refund and the said view is confirmed by CEGAT on 1.11.1999. Hence, atleast in November 1999, the right

of GSFC was concluded. This petition is preferred on 8.1.2001, i.e. almost after one year and two months. And that too, after this gross delay, the contention of the Revenue is that because of the view taken by the Hon'ble Supreme Court in the intervening period, GSFC is not entitled to refund.

7. The Power of the High Court to issue a writ under Article 226 is discretionary. Inordinate delay is an adequate ground for refusing to exercise the discretion. We are conscious of the fact that the Limitation Act does not apply to writ petitions, but where the delay is of more than a reasonable period, it will be proper for this Court to hold that the delay is unreasonable. Learned Counsel for the Revenue submitted that this Court should take into consideration the fact that the Revenue was agitating before another forum. Even if that fact is taken into consideration, after several rounds of litigation, the CEGAT decided the matter finally on 1.11.1999, and thus there is delay of more than one year. It is also required to be noted that the Tribunal decided the matter as per the law prevailing at the relevant time. Looking to the facts narrated hereinabove, the subsequent judgment cannot come to the rescue of the Revenue to save the limitation.

8. However, before parting with this judgment, we would also like to observe that so far as the impugned order delivered by the Tribunal is concerned, it has become final. It is well known principle that finality of the judicial decisions is one of the essential ingredients upon which the administration of justice must rest, and subsequent events do not affect the decision. The Apex Court in the case of D.K. Soni Vs. P.K. Mukerjee and Others, , in paragraph 12, pointed out that:

In that view of the matter, we are of the opinion, even if the contention advanced on behalf of the respondents are taken into consideration as a new look is taken because of the subsequent events, which in our opinion, cannot be done in view of the specific prohibition in CI. (rr) of Section 43(2) of the new Act, the appellant has no case.

9. In paragraph 13, the Apex Court further held as under:

After all finality of the decision of the authorities under the Act has to be given due reverence and place in the judicial administration. Taking cautious note of the relevant subsequent events, we find no merit in the appellant's contentions inasmuch as there is nothing on record to show that the landlord's bona fide need for his residence in Allahabad has been met or can be met in the state of affairs except by the order which is impugned in this appeal.

10. Even if the decision rendered by a competent Court/Tribunal having jurisdiction is wrong, it is as much binding between the parties as a right one and may be superseded only by appeals to higher forum or other procedure like review which law provides State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, . In the instant case, as stated above, the Commissioner of Appeals, Ahmedabad by order dated 27.5.1999 held that GSFC is entitled for the refund and the said view is confirmed by CEGAT on 1.11.1999.

The Revenue did not challenge the same within a reasonable period. Hence, so far as the parties are concerned, the judgment has become final as the same is not challenged.

11. In the facts of this case, we are of the considered view that the order has become final but for one or the other reason, the Revenue was delaying the refund, and at this belated stage, the Revenue is not entitled to any relief as it appears to us that the Revenue has played a tactics to stall the refund. We, therefore, summarily dismiss this petition.