
(1989) 03 AP CK 0006
In the Andhra Pradesh High Court

Coromandal Fertilizers Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-03-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 56A, 56A(3)

Citation : (1989) 1 ALT 12 : (1990) 48 ELT 333

Hon'ble Judges : Y. Bhaskar Rao, J;K. Jayachandra Reddy, J

Bench : Division Bench

Judgement

K. Jayachandra Reddy, J.—Coromandal Fertilizer Limited are the petitioners in this writ petition and seek a writ of Mandamus directing the respondents viz., the Government of India and the Customs authorities, to refund to the petitioner in cash or by a cheque an amount of Rs. 38,67,996,67.

2. The matter arose under the following circumstances : The petitioner carries on the business of manufacture of fertilizer including Gromor NPK. For the purpose of manufacture of Gromor NPK, the petitioner uses Muriate of Potash which suffers customs duty. Under law, admittedly, duty paid on raw material should be given credit while computing duty on finished product. In the instant case, the petitioner sought permission computing to avail set-off of proforma-credit in respect of countervailing duty paid on supplies of muriate of potash purchased and used by the petitioner in the manufacture of fertilizers, under Rule 56A of the Central Excise Rules. The Assistant Collector of Central Excise accorded necessary permission under Rule 56A of the Rules by order No. 14HH/18/364/71 dated November 11, 1971, with effect from the said date only, whereas, the petitioner sought permission from a different date viz., the date of the application made by the petitioner. This controversy was sought to be resolved by filing appeal/revision, the details of which may not be necessary for the purpose of this case. However, ultimately, the petitioner paid the full amount on the finished product inasmuch as the petitioner was not permitted to avail the benefit of proforma-credit. Thereafter, the petitioner applied for refund of the excise duty

paid on the manufacture of the fertilizers during the period 1971 to 1976, on 15-12-1984. The respondent issued a show cause notice stating as to why the application for refund should not be rejected. The petitioner submitted a detailed reply to the show cause notice on 23-9-1985 pointing out that the petitioner had fulfilled all the relevant conditions for availing proforma-credit as per Rule 56A of the Rules. On a consideration of the reply, the Assistant Collector had held that the petitioner had satisfied all the conditions stipulated and was entitled to refund of the amount claimed in R. G. 23, Part-II Account. However, the claim of the petitioner for refund in cash or by cheque was rejected by the Assistant Collector relying upon the provisions of Rule 56A (3)(vi)(d) of the Rules i.e., no credit shall be refunded in cash or by cheque, and directed the petitioner to take credit in R. G. 23, Part-II account. This order was challenged by the petitioner before the Collector. The Collector remanded the matter to the Assistant Collector. Questioning the remand order, the petitioner filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). The Tribunal, following a decision of the Bombay High Court, allowed the petitioner's appeal. In this case viz. Deccan Sales Corporation and another Vs. R. Parthasarthy and others, the Bombay High Court observed :-

"...What clause (vi) prohibits is only giving to the manufacturer a net surplus of advantage in cash on the footing that the quantum of excise duty collected on the raw materials exceeds the quantum of excise duty payable by the manufacturer on the goods produced."

Relying upon the interpretation given by the Bombay High Court on the said Clause, the Tribunal allowed the petitioner's appeal.

3. From the above facts, it can be seen that the order of the Tribunal is clear in so far as the refund is concerned, and the respondents are under legal obligation to refund the amount as claimed by the petitioner.

4. The learned Standing Counsel for the Central Government, however, submits that the amount can be adjusted in R. G. 23, Part-II account. The learned Counsel for the petitioner submits that there is no such account now in respect of finished goods, in this case, because no duty is leviable, since 1980, either on raw material or on finished products i.e., Gromor NPK. Therefore, according to him, the question of maintaining R. G. 23 account does not arise much less adjustment in respect of the amount that is refundable. Under these circumstances, the order of the Tribunal has to be enforced.

5. We, accordingly, direct the respondents to refund, as early as possible, preferably within six months from today, the amount claimed by the petitioner and as ordered by the Tribunal.

6. So far as interest is concerned, initially there was some controversy between the parties regarding availing of proforma-credit in respect of countervailing duty paid on supplies of merit of potash, under Rule 56A of the Rules. That went on, for some time, from one authority to the other by way of appeal/revision etc. It

is the Tribunal which ultimately gave a quietus to it. However, the order of the Tribunal is again questioned on this writ petition, and the Central Government has taken a stand that, even now, adjustment can be made under R. G. 23 account.

7. Having taken the view that the amount claimed by the petitioner is refundable, we hold that the petitioner is entitled to interest on the amount refundable at the rate of 8 per cent per annum, from today till the date of payment.

8. The writ petition is accordingly allowed. No order as to costs.