(1999) 02 AHC CK 0101

In the Allahabad High Court

Case No : C.M.W.P. (Tax) No. 573 of 1992

Dhampur Sugar Mills Ltd. APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11A(1)

Citation : (1999) 2 AWC 1170 : (1999) 84 ECR 840

Hon'ble Judges : S.L. Saraf, J;Lakshmi Bihari, J

Bench : Division Bench

Advocate : N.C. Gupta, for the Appellant;

Final Decision : Disposed Of

Judgement

S.L. Saraf, J.—On 9.4.1997, an ex parts order was passed by this Court on merits after hearing the counsel appearing for the petitioner. The respondents'' counsel was absent. Thereafter an application for recall of the said order was moved. This Court on 31.7.1998 allowed the recall of the judgment and order dated 9.4.1997. The matter is heard today when both the counsel for the petitioner as well as the respondents have appeared. The only contention of the petitioner''s counsel before this Court is that notice issued on 1.5.1992 (Annexure-5 to the writ petition) be quashed and set aside inasmuch as u/s 11A of the Central Excise and Salt Act, 1944, no notice for refund of interest can be issued. The respondents'' counsel submitted that the refund made under the orders of the Superintendent of Central Excise was wrongful and illegal and without any authority on the part of the Superintendent of Central Excise to pass such an order of refund. The entire refund was made illegally and contrary to the authority of the Superintendent of Central Excise. As a matter of fact, there were no credit entries on the principal amount, as such no credit can be given on the interest amount of the said principal amount. We have seen the provisions of sub-section (1) of Section 11A of the Act which reads as follows :

"11A. Recovery of dudes not levied or not paid or short-levied or short-paid or erroneously refunded.--(1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect as if, for the words "six months", the words "five years" were substituted.

Explanation.--Where the service of the notice is stayed by an order of a Court, the period of such stay shall be excluded in computing the aforesaid period of six months or five years, as the case may be."

2. The provision relates to recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. Section 11A does not speak of refund of any interest amount. Sub-section (1) of Section 11A clearly refers of duties and not of the interest and, therefore, sub-section (1) of Section 11A of the Act has no application to the interest sought to be recovered from the petitioner pursuant to show cause notice dated 1.5.1992 (Annexure-5 to the writ petition).

3. A counter-affidavit has been filed by the respondents. On a perusal of the said counter affidavit, it appears that nothing has been stated about the applicability of sub-section (1) of Section 11A of the Act to the interest amount. Mr. Shishir Kumar, learned counsel for the respondents, however, submitted that such recovery was possible with reference to other provisions of the Act, though he is unable to cite any provisions of the Act whereby show cause notice can be issued for recovery of the interest amount.

4. On these facts, the petition is disposed of with the observation that in pursuance of the impugned show cause notice dated 1.5.1992, no recovery of interest shall be made from the petitioner u/s 11A(1) of the Act, but this will not prevent the respondent to file a suit or take any other legally permissible proceedings for recovery of the interest amount.

5. The matter is disposed of accordingly.

