

(1986) 07 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1282 of 1982

Diamond Shamrock (I) Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-07-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 173F, 173J
Central Excises and Salt Act, 1944 — Section 11B

Citation : (1988) 15 ECR 199 : (1988) 36 ELT 393

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The short question involved in this petition is whether the petitioners are entitled to refund of the excise duty paid under mistake of law. Petitioner No. 1 is a Public Limited Company and manufacture urea formaldehyde padding solution and cross linking agents. The items manufactured by the petitioners were classified as falling under Tariff Item 15A of the First Schedule to the Central Excises and Salt Act, 1944, (hereinafter referred to as "the Excise Act"), and the petitioners were paying excise duty and clearing the products from October 1, 1974 to May 24, 1977. The excise duty was paid by the petitioners by debiting the duty amount in the Personal Ledger Account as required under Rule 173F of the Excise Act. Tariff Item 15A of the First Schedule covers" artificial synthetic resins and plastic materials only, and the petitioners" products were really not classifiable under Tariff Item No. 15A. The petitioners accordingly entered into correspondence with the respondents and ultimately a Trade Notice dated April 18, 1977 was issued by the respondents informing that padding solution or cyclic urea solution or cross linking agents should be treated as items falling outside the purview of Item 15A of the First Schedule and such items would fall under Tariff Item 68 of Central Excise Tariff.

2. After publication of the Trade Notice on April 18, 1977, the petitioners filed refund applications on July 27, 1977 seeking refund of excise duty paid for the period commencing from October 1, 1974 to March 31, 1976. The refund

applications were rejected by the Assistant Collector, Central Excise, Kalyan by order dated February 16, 1979 on the ground that the refund claim was made beyond the period of limitation. The petitioners carried an appeal, but the appeal ended in dismissal by order dated November 13, 1981 passed by the Collector of Central Excise (Appeals), Bombay. The appellate authority concurred with the conclusion of the Assistant Collector that the refund claim was barred by limitation prescribed under Rule 11 read with Rule 173J of the Central Excise Rules. The order of the two authorities below is under challenge in this petition.

3. Shri Phadnis, learned counsel appearing on behalf of the petitioners, submitted that the view taken by the two authorities below is clearly erroneous. The learned counsel urged that to apply the bar of limitation prescribed under Rule 11 of Central Excise Rules in respect of duty paid and recovered under mistake of law is clearly erroneous and unsustainable. The learned counsel urged that it is now well settled that in case duty is paid by or recovered under mistake of law, then the limitation prescribed under Rule 11 will have no application. Shri Rege, learned counsel for the respondents, submitted that the excise authorities were bound by Rule 11 (since replaced by Section 11B of the Excise Act) and the authorities could not have granted refund in case the claim was barred by limitation. The submission is not correct, as the Courts have consistently taken the view that excise duty recovered by mistake of law must be refunded irrespective of bar of limitation prescribed under Rule 11 or Section 11B of the Excise Act. In my judgment, the petitioners are entitled to the refund claimed.

4. Accordingly, petition succeeds and the rule is made absolute in terms of prayer (a). The respondents are directed to calculate the amount of refund due to the petitioners and pay the same within a period of four months from to-day. In the circumstances of the case, there will be no order to costs.