
(1974) 03 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 2000/72

Elixir Plastic

APPELLANT

Vs

Superintendent of Central Excise and Others

RESPONDENT

Date of Decision : 15-03-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 11
Tariff Act, 1934 — Section 2A

Citation : (1978) 2 ELT 474

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P. Subramonian Poti, J.—The petitioner is a firm manufacturing polythelene film, sheets and bags. These products fall within Item 15A of Schedule I of the Central Excises and Salt Act, 1944. These were subject to excise duty at 30 per cent ad valorem. According to the petitioner such duty was paid also for the period from 1.5.70 to 16.7.70, but actually such duty was not payable after 1-5-70. According to him, Ext P2 notification exempted payment of excise duty on polythelene sheeting, films and sheets, manufactured from artificial or synthetic Resins and Plastics materials, which are materials falling under Sub-section (1) of item 15A. If upon such material the appropriate duty of excise or additional duty u/s 2A of the Indian Tariff Act, 1934, had been paid exemption from so much of duty of excise leviable thereon as is equivalent to the duty of excise or additional duty already paid is admissible. The petitioner claims that on this account, namely on account of wrong payment made for the period from 1.5.70 to 16.7.1970, he had to obtain a refund of a sum of Rs. 2,742.63. For a subsequent period demand was made for excise duty of Rs. 2213.94. According to the petitioner when a larger amount was due to him this demand ought not have been made. Therefore relief is sought in this petition.

2. The counter-affidavit filed on behalf of respondents 1 to 3 by the 3rd

respondent discloses certain further facts. The counter-affidavit shows that by notification Ext. R1 such of those products produced out of plastic granules on which the duty of excise had been paid was exempted from the whole of the excise duty leviable thereon. This amended by Ext R2 extending it to other cases. Similar extension was made by Ext. R3. All these were withdrawn by Ext R4 notification dated 1.5.1970. The result was that Polythylene lay flat tubings and sheetings became dutiable from 1.5.1970. It was subsequently by Ext P2 that the exemption was introduced and Ext. P2 is dated 8.6.1970. Therefore for the period from 1.5.1970 to 7.6.1970 there was no exemption. Ext. P1 on which the petitioner relied besides being not applicable to the products of the petitioner was also not in force because of Ext. R4 which cancelled all the previous notifications. Thus the position on 1.5.1970 was that there was no exemption whatsoever and duty was payable up to 7.6.1970. This position the petitioner also accepts in the reply affidavit. But his contention is that nevertheless that much of the excise duty paid on these products from 8.6.1970 to 16.6.1970 must be exempt from duty and that at least must be set off towards the demand made. In other words the contention is that in view of the operation of the notification referred to in Ext. P2 for the period subsequent to Ext. P2 the exemption should have been made available to the petitioner.

3. According to the respondents, there is no question of set off for, even if payment of excise duty has been erroneously made by a party there is a procedure prescribed by the relevant rules regarding refund and therefore it cannot be set off automatically against other dues. When there is a statutory liability to pay any sum of money that will work out independent of any other claim even if it be a claim for refund of payment made under the same statute erroneously. Therefore there is no question of set off. There is no challenge against the demand for Rs. 2,213.94. Therefore that must be enforceable. Whether the petitioner is entitled to any sum by way of refund of duty payable is a different question. That may be examined duty not in connection with any plea that legitimate dues should not be recovered. I therefore make it clear that the demand of Rs. 2,213.94 is enforceable and will not in any way be affected by the decision herein.

4. Then the only other question concerns whether the petitioner is entitled to any relief in regard to the excise duty said to have been paid on the products for the period from 8.6.70 to 17.6.70. That of course will depend on the question whether the petitioner has applied for refund. Rule 11 of the Central Excise Rules deals with the question of refund. That provides for method and manner in which refund has to be sought. Evidently petitioner has not resorted to the procedure prescribed. There is an attempt before me to challenge the rule. The foundation for such a challenge has not been made in the petition, so much so, I need not go into it. It is for the parties, if so aggrieved, to seek appropriate remedies for obtaining refund if that is permissible in law. That question is not agitated here and it is not necessary to adjudicate it here.

5. Subject to what is stated above, the original Petition is dismissed. But in the circumstances no costs.