(2010) 12 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No. 10067 of 2010

Exclusive Steels Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Central Excise Rules, 2002 — Rule 18
Central Excises and Salt Act, 1944 — Section 11B, 35EE, 37
Constitution of India, 1950 — Article 226

Citation : (2011) 267 ELT 586

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : Uday Joshi, for Trivedi and Gupta, for the Appellant; Darshan M. Parikh, for the Respondent

Final Decision : Dismissed

Judgement

H.B. Antani, J.—The present petition under Article 226 of the Constitution of India as well as under provisions of the Central Excise Act, 1944 and the rules made there under is filed by the Petitioner-Company, with the following prayers:

(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing impugned Order No. 857/10-CX., dated 18-5-2010 passed by the Joint Secretary to the Government of India, Ministry of Finance;

(B) Your Lordships may be pleased to issue an appropriate writ, order or direction holding and declaring that the claim of rebate filed by the Petitioner company were required to be entertained by Respondent No. 2.

2. Short facts of the present petition are as under:

The Petitioner-Company is engaged in the activity of manufacture and export of cold roll stainless steel articles falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. In exercise of powers conferred u/s 37 of the Act, the Central Government made Central Excise Rules, 2002 [for brevity, ''the Rules'' hereinafter]. Rule 18 of the Rules pertains to rebate of duty to the effect that where any goods are exported, the Central Government may, by a notification, grant rebate of duty paid on excisable goods or duty paid on materials used in the manufacture or processing of such goods which shall be subject to conditions of limitations, if any, prescribed in this regard. A Notification being Notification No. 19/2004 -C.E. (N.T.), dated 6-9-2004 as amended came to be issued, directing that there shall be granted rebate of the whole of the duty paid on excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985. Similarly, a notification being Notification No. 21/2004 -C.E. (N.T.), dated 6-9-2004 as amended also came to be issued directing that there shall be granted rebate of whole of the duty paid on excisable goods used in the manufacture or processing of export goods. The Petitioner-Company, during the period from 7-8-2004 to 16-9-2004 had exported cold roll stainless steel circles on four different occasions and had made payment of Central Excise duty on the said goods amounting to Rs. 9,31,689/- for which on 8-8-2006, the Petitioner-Company filed rebate claims of duty paid on goods exported. During the period from 15-8-2004 to 8-9-2004, the Petitioner-Company had exported cold roll stainless steel circles on four different occasions and had made payment of Central Excise duty on the said goods amounting to Rs. 6,33,818/- for which on 18-8-2006, the Petitioner Company filed rebate claims of duty paid on goods exported.

3. On 6-10-2004, an investigation was carried out by the Directorate of Revenue Intelligence in the unit of the Petitioner-Company and other places when various documents were placed under seizure.

4. The Petitioner-Company, at the time of submitting the aforesaid rebate claims on 8-8-2006 and 14-8-2006 had categorically stated that the export documents, such as original and duplicate of like ARE-1 and ARE-2, shipping bills/excise invoices etc. were seized by the officers of the Directorate of Revenue Intelligence as aforesaid on 6-10-2004. The investigation was followed by a show cause notice dated 5-4-2005 pursuant to which the Petitioner-Company filed an application before the Settlement Commission which ultimately culminated in an order No. 30/Cus/2006 dated 4-4-2006. Thereafter, on 28-7-2006, the Petitioner received back ARE-1 and ARE-2 and other original documents from the Directorate of Revenue Intelligence. After receipt of the aforesaid documents, the Petitioner filed the aforesaid rebate claims.

5. In connection with the aforesaid rebate claim''s filed by the Petitioner-Company, a show cause notice came to be issued as to why the rebate claims should not be rejected as time barred inasmuch as the rebate claim is to be submitted within a period of one year from the date of export which was not done in the present cases. The Petitioner replied to the show cause notice. Ultimately, Respondent No. 2 passed an Order-in-Original being No. MP/700 to 707/Reb/06-07 dated 23-3-2007 rejecting the aforesaid rebate claims filed by

the Petitioner u/s 11B of the Act as being time-barred.

6. The Petitioner challenged the aforesaid order before the Commissioner of Central Excise (Appeals) on the ground that the original documents were seized by the Directorate of Intelligence on 6/7-10-2004 which were returned by them only on 28-7-2006 and the rebate claims were filed immediately thereafter on 14-8-2006. The Commissioner (Appeals) passed an order being Order-in-Appeal No. 77/2007 dated 1-8-2007 holding that the delay in filing the rebate claims were on account of the documents being in custody of the Directorate of Revenue Intelligence and therefore, the period during which the same were in custody of Directorate of Revenue Intelligence, the Petitioner-Company could not have filed the claim and therefore the said period was required to be excluded while calculating the period of limitation.

7. Subsequent thereto, an Order-in-Original being No. MP/447/ Reb/08-09, dated 23-7-2008 came to be passed sanctioning rebate of total amount of Rs. 15,19,914/-.

8. Against the aforesaid order granting rebate, Central Excise Department preferred an appeal before the Commissioner of Central Excise (Appeals-I), Ahmedabad which is still pending.

9. The Central Excise Department filed a Revision Application u/s 35EE of the Act before the Revisional Authority challenging the Order-in-Appeal No. 77/2007 dated 1-8-2007 passed by the Commissioner (Appeals). Ultimately, the Revisional Authority by order dated 18-5-2010, allowed the Revision and set aside the Order-in-Appeal No. 77/2007 dated 1-8-2007.

10. The said order dated 18-5-2010 passed by the Revisional Authority is challenged by the Petitioner in the present petition.

11. Learned advocate on behalf of the Petitioner submitted that the impugned order under challenge is illegal, erroneous and suffers from the vice of non-application of mind on the part of the Revisional Authority, and therefore, it requires to be quashed and set aside. Learned advocate, placing reliance on the order passed by the Appellate Authority submitted that the Revisional Authority has not appreciated the fact that the Petitioner-Company could not file its claim for rebate in view of the fact that the relevant documents required to be submitted in support of the claim were placed under seizure by the Directorate of Revenue Intelligence and therefore, the Petitioner was not in a position to apply for rebate. Thus, considering the relevant date, i.e. 28-7-2006 as the date on which the documents were returned to the Petitioner by the Directorate of Revenue Intelligence, the rebate claims were filed within the period of limitation. Learned advocate for the Petitioner, therefore, submitted that the Revisional Authority has committed an error in holding against the Petitioner-Company. Learned advocate submitted that the Revisional Authority has also not appreciated the judgments referred to at the time of hearing in their true perspective while rejecting the claim of the Petitioner. The Revisional Authority

also committed an error in not appreciating the fact that the procedure prescribed by subsidiary legislation is to be in the aid of justice and the procedure of requirements cannot be so read as to defeat just cause of the Petitioner. Learned advocate further submitted that even the order passed by the Revisional Authority is a non-speaking order inasmuch as it does not give any findings on the judgment rendered by this Court in the case of Cosmonaut Chemicals v. Union of India reported in 2009 (233) E.L.T. 46 (Guj). Thus, the learned advocate submitted that the Petitioner has made out a case for the grant of relief as prayed for, and the prayers as set out in the petition are required to be granted and the impugned order bearing No. 857/10-CX., dated 18-5-2010 passed by the Joint Secretary to the Government of India, Ministry of Finance be quashed and set aside, and necessary direction be also given that the claim of rebate filed by the Petitioner-Company be ordered to be entertained by the Respondent No. 2.

12. On the other hand, Mr. Darshan Parikh, learned advocate appearing for Respondent No. 2 submitted that on perusal of the order passed by the Revisional Authority and the reasons assigned therein, the Petitioner has not made out a case for grant of relief as prayed for in the petition. The Revisional Authority has considered in a exhaustive manner and came to a conclusion that the claim for rebate preferred by the Petitioner is time barred in terms of Section 11B of the Central Excise Act, 1944. Learned advocate submitted that the Petitioner has not explained the inordinate delay in preferring the claim for rebate Placing reliance on paragraph 5 of the affidavit-in-reply filed on behalf of the Respondent No. 2, learned advocate submitted that the Petitioner had enough time to file an application for rebate before the documents were seized by the Directorate of Revenue Intelligence. The documents were seized by the Directorate of Revenue Intelligence because of an allegation that there were acts of commission and omission on the part of the Petitioner leading to violation of law. Thereafter the Petitioner approached the Settlement Commissioner. Therefore, no fault can be attributed to the department if the Petitioner was unable to file the claim within the period of limitation. Learned advocate submitted that in this facts situation, the Petitioner cannot place reliance on the judgment in the case of Cosmonaut Chemicals [supra] because the facts of that case and the facts of the present case are entirely different. Thus, placing reliance on the averments made in the affidavit-in-reply, learned advocate submitted that the Petitioner has not made out a case for grant of any relief as prayed for or otherwise, and the petition deserves to be dismissed. Learned advocate Mr. Parikh also relied on the judgment in the case of Alembic Glass Ind. Ltd. Vs. Union of India (UOI), in support of his contention that the claim made beyond the period of limitation requires to be rejected.

13. We have heard Mr. Uday Joshi for M/s. Trivedi & Gupta, learned advocate for the Petitioner and Mr. Darshan M. Parikh, learned advocate for Respondent No. 2 at length and in great detail. We have also considered the provisions of the relevant law and have also perused the Order-in-Original being No. MP/700 to

707/Reb/06-07 dated 23-3-2007, Order-in-Appeal No. 77/2007 dated 1-8-2007 passed by the Commissioner (Appeals), Order-in-Original being No. MP/447/ Reb/08-09 dated 23-7-2008 and the order passed by the Revisional Authority dated 18-5-2010, whereby the Revisional Authority allowed the Revision and set aside the Order-in-Appeal No. 77/2007 dated 1-8-2007.

14. The main contention of the Petitioner that the Petitioner-Company was prevented from making its claims for rebate in view of the fact that the relevant documents required to be submitted in support of the claims were placed under seizure by the Directorate of Revenue Intelligence and considering the fact that the documents were returned on 28-7-2006 by the Directorate of Revenue Intelligence, the rebate claims were filed within the period of limitation. In support of this contention, reliance is also placed on the judgment of this Court in the case of Cosmonaut Chemicals [supra].

15. Before we resort to dealing with the submissions made by the learned advocate on behalf of the Petitioner, it would be worthwhile to refer to paragraph 2.4 of chapter 9 of Central Excise Manual about which a reference is made in paragraph 2.4 of the affidavit-in-rejoinder [at page 73 of the compilation] and a copy whereof is also produced at annexure ''B'' to the affidavit-in-rejoinder [pages 84-85 of the compilation]. The said paragraph 2.4 reads thus:

2.4 It may not be possible to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Consequently, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period.

(emphasis supplied by us)

16. It thus appears that even if the relevant documents were not available with the Petitioner-Company, the Petitioner Company could have filed the application without the relevant documents, which the Department was bound to receive so that the claimant is not hit by limitation period.

17. In paragraph 22 of the judgment in the case of Cosmonaut Chemicals [supra], this Court held as under:

22. It is necessary to state and clarify here that mitigating circumstance as flowing from the aforesaid legislative scheme is one and one only viz. Where the lapse as to non-availability of requisite document is on account of Central Excise

Department or Customs Department. The legislative scheme does not provide for any other exception or mitigating factor and in the circumstances on a conjoint reading of the provision and the instructions in the CBEC Manual, there can be no other circumstances under which a claimant would be entitled to prefer a claim beyond the statutorily prescribed period of limitation.

18. Thus, the only circumstance under which a claimant would be entitled to prefer a claim beyond the statutorily prescribed period of limitation would be where the lapse as to non-availability of requisite document is on account of Central Excise Department or Customs Department. Examining the facts of the present case in the light of the aforesaid, the documents in question had been seized by the Department of Revenue Intelligence and not by the Central Excise Department or Customs Department. Even before the said documents came to be seized, the Petitioner had enough time to file a claim for rebate. Besides, even if the documents were seized by Directorate of Revenue Intelligence, it is not the case of the Petitioner that it had approached the concerned authorities for return of the said documents and that the authorities had refused to do so. There is not a whisper in the entire petition to indicate that the Petitioner had made any effort worth the name to secure the documents so as to enable it to file the rebate claims within the period of limitation. The Petitioner remained totally passive and it was not till the documents were returned by the authorities concerned after the matter was settled before the Settlement Commission that the Petitioner filed the rebate claim. Thus, it is apparent that the case of the Petitioner does not fall within the excepted category carved out in the aforesaid decision of this Court. When the statute stipulates a period of limitation with no power to condone the same, the claimant is required to file his claim within the prescribed period unless prevented from doing so as laid down in the case of Cosmonaut Chemicals [supra].

19. Considering paragraph 2.4 of chapter 9 of Central Excise Manual vis-a-vis the law laid down by the Division Bench in the judgment in the case of Cosmonaut Chemicals [supra], we are of the view that the Petitioner has not made out a case for entertaining the claim for rebate beyond the period of limitation.

20. For the foregoing reasons, the petition fails and is required to be dismissed. The petition, accordingly, stands dismissed with no order as to costs.

