(2003) 11 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 11986 of 2003

Gujarat Insecticides Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Citation : (2005) 183 ELT 9

Hon'ble Judges : K.A. Puj, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Mihir Joshi, for Nitin K. Mehta, for the Appellant; D.N. Patel, SCGSC, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—The petitioners have been aggrieved by an order dated 10-6-2003, whereby a sum of Rs. 1,16,41,592/-, which, according to the petitioner was payable to the petitioner, has been directed to be credited to the Consumer Welfare Fund.

2. The case of the petitioners is that in pursuance of certain notices, in all a sum of Rs. 1,16,41,592/-, was demanded by the respondent authorities from the petitioners in different proceedings and the said amount had been deposited under protest by the petitioners with the respondents when the appeals filed by the petitioners were pending before the Hon''ble Supreme Court. The Hon''ble Supreme Court was pleased to allow the said appeals by an order dated 5-3-2003: [2003 (157) E.L.T136 (S.C.)] whereby the Hon''ble Supreme Court had held that the concerned intermediate products were not dutiable. In the circumstances, the petitioners were entitled to get back the amount, which had been paid by them, when the appeals filed before the Hon''ble Supreme Court were pending. The amount had to be paid by the petitioners during the pendency of the appeals before the Hon''ble Supreme Court, as the Hon''ble Supreme Court had not granted any Order of stay in favour of the petitioners.

3. As the Hon''ble Supreme Court had allowed the appeals of the petitioners, the respondent authorities ought to have refunded the amount deposited by the petitioners, but as the said amount had not been refunded, the petitioners had submitted an application dated 17-3-2003 for refund of the said amount. In pursuance of the said application, by a letter dated 6-6-2003, the Asstt. Commissioner of Central Excise and Customs, Div-I, Ankleshwar, had called upon the petitioner to submit proof to the effect that incidence of the said amount of duty had not been passed on to the buyers by the petitioners.

4. In pursuance of the said letter, the petitioners had submitted reply on 11-6-2003 and had submitted that the amount in question was not an amount of duty, but the said amount was paid under protest when the appeals were pending before the Hon''ble Supreme Court and, therefore, there was no question of passing incidence of the so-called duty to buyers.

5. After considering the reply, the Asstt. Commissioner of Central Excise and Customs, Div-I, Ankleshwar, passed the impugned order dated 10-6-2003, whereby he directed that the amount in question be credited to the Consumer Welfare Fund, as, according to him, the said amount was not to be refunded to the petitioner.

6. Learned Advocate Shri Mihir Joshi appearing for the petitioner has submitted that the respondent authorities committed a mistake by considering the said amount of Rs. 1,16,41,592/- as duty paid, though the said amount was paid under protest during the pendency of the appeals before the Hon''ble Supreme Court against the orders passed by the concerned authorities as no stay had been granted by the Supreme Court.

7. The learned advocate has taken us through the relevant orders as well as the following judgments :

(1) Parle International Ltd. Vs. Union of India,

(2) Sinkhai Synthetics and Chemicals Pvt. Ltd. Vs. Collector of Central Excise,

In addition to the above referred judgments, he has also referred to a circular dated 2-1-2002 issued by the Government of India, Ministry of Finance (Deptt. of Revenue), which after considering the judgments referred to hereinabove has instructed the Government authorities not to treat the amount of pre-deposit as duty and the concerned assessee should not be called upon to submit refund application for getting refund of the amount of pre-deposit.

8. It has been submitted by the learned advocate appearing for the petitioner that respondent No. 2 had wrongly come to a conclusion that the amount in question was duty and, therefore, it was obligatory on the part of the petitioner to adduce evidence to the effect that incidence of the said duty had not been passed on to the buyers by the petitioner. It has been submitted by the learned advocate that looking to the law laid down in the judgments referred to hereinabove, and in view of the circular dated 2-1-2002 respondent No. 2 ought

not to have passed the impugned order and the amount ought to have been refunded to the petitioner.

9. On the other hand, Shri D.N. Patel, Sr. Central Government Standing Counsel, has submitted that the amount, which had been deposited by the petitioner was in the nature of duty and, therefore, even if the said amount is to be refunded, no amount of interest can be paid and, according to him, as the petitioner could not adduce any evidence to the effect that incidence of the said duty had not been passed on to the buyers, the petitioner is not entitled to refund of the said amount.

10. We have heard the learned advocates at length and have considered the judgments and the circular referred to hereinabove.

11. Upon considering the facts and looking to the law laid down by the Division Bench of this Court (Coram : B.C. Patel & D.H. Waghela, JJ.), it cannot be doubted that the amount had been paid by the petitioners under protest at the time when appeals had been pending before the Hon''ble Supreme Court. The said amount was not the amount of duty and, therefore it was not necessary for the petitioner even to submit an application for refund as laid down in the circular dated 2-1-2002.

12. We do not agree with the submissions made by the learned Sr. Central Government Standing Counsel that the amount, which had been paid under protest, was the amount of duty and, therefore, it was obligatory on the part of the petitioner to adduce evidence to the effect that the petitioner had not passed on the incidence of the duty to the buyers and, therefore, the petitioners were not entitled to the refund.

13. As stated hereinabove, looking to the law laid down by the Hon''ble Supreme Court as well as by this court and the circular dated 2-1-2002 issued in pursuance of the judgments referred to hereinabove, the amount in question cannot be considered to be the amount of duty and, as the said amount was paid under protest during pendency of the appeals before the Hon''ble Supreme Court, it was obligatory on the part of the respondent authorities to refund the said amount with reasonable interest thereon when the Hon''ble Supreme Court came to the conclusion that the petitioners were not liable to pay a sum of Rs. 1,16,41,592/-, which had been paid by the petitioners under protest.

14. Looking to the fact that the said amount had been retained by the respondent authorities without any justifiable reason, the said amount is ordered to be refunded to the petitioner immediately with interest @ 8% p.a., from 13-2-2003, the date of the order passed by the Hon''ble Supreme Court in the civil appeal preferred by the petitioner. The said amount shall be refunded to the petitioner within three months from the date of receipt of a certified copy of this judgment. If the said amount is not paid within 3 months, the rate of interest shall be raised to 15% after completion of 3 months till the amount is paid to the petitioner. Looking to the fact that the petitioner has been constrained to

approach this court for claiming the amount, which it had a right to get in pursuance of the order passed by the Hon''ble Supreme Court, costs to the tune of Rs. 2,500/- is ordered to be paid to the petitioner and the said amount shall also be paid along with the amount of refund and interest.

In view of the above directions, the petition stands disposed of as allowed. Rule is made absolute D.S. permitted.