

**(2014) 07 GUJ CK 0079**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 8499 of 1999**

Gujarat Petrosynthese Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision : 10-07-2014**

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 11(2), 11(2)(e), 11B, 11B(2)(E), 35(B)  
Constitution of India, 1950 — Article 226

**Citation :** (2014) 309 ELT 627 : (2014) 47 GST 182 : (2015) 30 GSTR 6

**Hon'ble Judges :** Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

**Bench :** Division Bench

**Advocate :** Asim J. Pandya, Jitendra Malkan, Devang Vyas and Gaurang H. Bhatt, Advocate for the Respondent

## Judgement

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Mukesh R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order of direction quashing and setting aside the impugned order passed by the learned Customs, Excise & Gold (Control) Appellate Tribunal, West Block No. 2, R.K. Puram, New Delhi, (Appellate Tribunal), being Final Order Nos. 273 to 292/1999-C, Dated: 08.04.1999 (Annexure "F"), in Appeal Nos. E/977/95-C & E/1026 to 1044/95-C, arising out of Order-in-Appeal No. CS-6 to 33/BRD/95 issued on 18.02.1995 by Collector of Central Excise (Appeals), Bombay. The facts leading to the present Special Civil Application in nutshell are as under;

2. The Indian Petrochemicals Corporation Ltd. (hereinafter referred to as "IPCL") submitted 28 different refund applications under Section 11B of the Central Excise Act, 1944. It was the case on behalf of the IPCL that they are manufacturing different petrochemicals and chemicals. C-4 Raffinate (Liquefied Petroleum Gas, "LPG") is one of the products manufactured by them. They were supplying these products to the nearby factory of M/s. Gujarat Petrosynthese Ltd. (GPL) through pipeline. After utilisation of the said product at the

consignee's factory in the manufacture of polyisobutylene, some quantity is returned through pipeline again to M/s. IPCL. This returned stream is claimed to be unreacted portion of the feed stream, which was originally supplied by M/s. IPCL to M/s. GPL. The IPCL claimed exemption for the said return stream under notification No. 157/89, Dated: 17.07.1989. According to the IPCL, said notification exempts petroleum gases and other gaseous hydrocarbons falling under heading No. 27.11, intended for use in the manufacture of polyisobutylene from so much of duty of excise leviable thereon, as is in excess of the duty leviable on the quantity of gas consumed in the manufacture of polyisobutylene. It was the case on behalf of the IPCL that for the said purpose, the Notification provided that the quantity consumed in the manufacture of polyisobutylene shall be calculated by subtracting from the quantity of the said gases received by the factory manufacturing polyisobutylene, the quantity of the said gases returned by the consuming factory to the factory which supplied the said gases. It was, further, the case of the IPCL that the returned stream of C-4 Raffinate is used by them in manufacturing their final product as fuel and the Notification No. 28/89, Dated: 01.03.1989, exempts from payment of duty goods. Therefore, IPCL claimed refund of duty in respect of the gases received back by them as unreacted C-4 Raffinate from GPL.

3. The Asst. Collector rejected the refund claims of IPCL on merits. It appears that felling aggrieved and dissatisfied with the order of the Asst. Collector, rejecting the refund claims filed by the IPCL in respect of the product C-4 Raffinate, IPCL preferred 28 different appeals before the Commissioner (Appeals), who, by a speaking and detailed reasoned order on merits, rejected the aforesaid appeals preferred by the IPCL. It appears that the IPCL, who paid the Excise Duty on the aforesaid excisable goods and claimed the refund under Section 11B of the Central Excise Act, did not challenge the aforesaid order passed by the Commissioner (Appeals) passed in 28 appeals. However, subsequently, the present petitioner preferred the aforesaid appeals before the learned Tribunal and by the impugned order, the learned Tribunal has dismissed all the appeals preferred by the petitioner on the ground that the petitioner has no locus standi to file such appeals.

4. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned Tribunal, rejecting the appeals preferred by the petitioner on the ground that the petitioner has no locus standi the petitioner has preferred the present petition under Article 226 of the Constitution of India.

5. Shri Krunal Nanavati, learned Advocate appearing on behalf of the petitioner, has vehemently submitted that the learned Tribunal has materially erred in rejecting the appeals preferred by the petitioner on the ground that the petitioner has no locus standi Relying upon Section 35B(1) of the Central Excise Act, Shri Nanavati, has further submitted that any person "aggrieved" by any of the orders, as mentioned in Section 35B(1) of the Act, may appeal to the Appellate Tribunal. It is submitted that as ultimately the burden of the excise

duty would be upon the petitioner and even otherwise, considering Section 11(2) (e) of the Act, the petitioner-Company being a buyer would be entitled for the refund, and therefore, the petitioner can be said to be a "person aggrieved", and hence, the learned Tribunal ought to have entertained the appeals preferred by the petitioner.

6. Shri Nanavati, learned Advocate appearing on behalf of the petitioner, has heavily relied upon a decision of the Division Bench of this Court in the case of Lalbhai Trading Company and Others Vs. Union of India (UOI) and Others, , in support of his submissions that the petitioner can be said to be a "person aggrieved".

7. Making above submissions, it is requested to allow the present Special Civil Application.

8. Present petition is opposed by Shri Gaurang Bhatt, learned Advocate appearing on behalf of the Respondent-Revenue. It is submitted that, as such, the petitioner never submitted any applications for refund under Section 11B of the Act and it was the IPCL, who paid the Excise Duty and submitted the applications under Section 11B of the Act, and therefore, when the IPCL failed upto the Commissioner (Appeals) and the order passed by the Commissioner (Appeals) rejecting the refund claims of the IPCL, has not been challenged by the IPCL, the petitioner cannot be said to be a "person aggrieved". It is submitted that, as such, by the order passed by the Asst. Collector and confirmed by the Commissioner (Appeals), no liability has been fastened upon the petitioner. It is submitted that, therefore, it is rightly held that the petitioner has no locus standi to prefer the appeals against the order passed by the Commissioner (Appeals), which was passed against the IPCL, whose refund applications came to be rejected. It is submitted that, if, the course adopted by the petitioner is accepted in that case, though the petitioner, who was supposed to make the application for refund under Section 11B of the Act, within the stipulated time, now by way of appeals, the petitioner would be claiming the refund. It is submitted that, if, the applications were preferred by the petitioner for refund claim under Section 11B of the Act, same would be barred by limitation, as provided under Section 11B of the Act, and therefore, same is not permissible. It is submitted that in the facts and circumstances of the case, the decision relied upon by the learned Advocate appearing on behalf of the petitioner, in the case of Lalbhai Trading Co. Through B.K. Bhatt (supra) would not be applicable to the facts of the case on hand.

9. Making the above submissions, it was requested to dismiss the present petition.

10. Heard learned Counsels appearing for the respective parties. At the outset, it is required to be noted that, as such, IPCL paid the Excise Duty, and thereafter, claimed refund of the said duty by filing different applications before the Asst. Collector by submitting that they were entitled to the exemption on the goods on which they paid the Excise Duty. However, the Asst. Collector rejected the said

applications on merits. Thereafter, Commissioner (Appeals), in appeals preferred by the IPCL, confirmed the orders passed by the Asst. Collector, rejecting their refund claim applications. It is required to be noted that, as such, IPCL, who submitted the applications for refund under Section 11B of the Act, did not carry the matter further. Instead, the petitioner filed appeals before the learned CESTAT, challenging the order passed by the Commissioner (Appeals), which was passed in the appeals preferred by the IPCL, and by which the Commissioner (Appeals) had rejected the refund claim applications submitted by the IPCL, however, same is not entertained and dismissed by the Tribunal on the ground that the petitioner has no locus standi to prefer the appeals against the order of the Commissioner (Appeals), passed in the appeals preferred by the IPCL against the rejection of their refund claim applications.

11. It is the case on behalf of the petitioner that under Section 11B(2)(E), the petitioner being a buyer, who is to borne the duty, was entitled to refund of the duty. However, it is required to be noted that, if that be so, as such the petitioner was required to submit refund applications under Section 11B of the Act within the stipulated time, as provided under Section 11(2) of the Act, which petitioner failed. Instead, petitioner preferred the aforesaid appeals against the order passed by the learned Commissioner (Appeals), dismissing the appeals preferred by the IPCL, confirming the order passed by the Asst. Collector, rejecting the refund claim applications of the IPCL, by submitting that the petitioner would be entitled to the refund of duty paid by the IPCL. Thus, for the first time, the petitioner claimed the refund of the Excise Duty paid by the IPCL by submitting the appeals before the learned Tribunal against the order passed by the Commissioner (Appeals), dismissing the appeals filed by the IPCL. Therefore, as such, the refund claims of the petitioner would be barred by the limitation provided under Section 11(2) of the Act. If, the petitioner would have preferred independent applications for refund of the claim under Section 11(2) of the Act in that case, the applications of the petitioner for refund of the claim would be required to be rejected on the ground of limitation. Under the circumstances, no error has been committed by the learned Tribunal in dismissing the appeals preferred by the petitioner on the ground that the petitioner has no locus standi to prefer appeals against the order of the Commissioner(Appeals), rejecting the appeals preferred by the IPCL and confirming the order passed by the Asst. Collector, rejecting the refund claim applications of the IPCL.

12. Now, so far as reliance placed on by the learned Advocate appearing on behalf of the petitioner on Section 35(B) of the Act and the decision of the Division Bench of this Court in the case of Lalbhai Trading Co. Through B.K. Bhatt (supra) is concerned, it is required to be noted that, as such, by the order passed by the Commissioner (Appeals) no liability would have been fastened upon the petitioner. By the impugned order, if any, liability would have been fastened, then and then, the petitioner can be said to be a "person aggrieved". Under the circumstance, the contention on behalf of the petitioner that the petitioner can be said to be a "person aggrieved", and therefore, his appeals ought to have

been entertained by the Appellate Tribunal, deserves rejection. For the reasons stated above, present petition fails and same deserves to be dismissed and is dismissed. Rule is discharged. No order as to costs.