(1996) 06 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 2727 of 1987

Hardillia Chemicals Limited APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 27

Citation : (1997) 68 ECR 410 : (1997) 92 ELT 474

Hon'ble Judges : M.B. Shah, C.J;P.S. Patankar, J

Bench : Division Bench

Advocate : Shri E. P. Bharucha and Mr. M. Shiraz, instructed by M/s. Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; Shri M.I. Sethna and Shri G.V. Rege, for the Respondent

Judgement

M.B. Shah, C.J.—The relevant submissions of the learned Counsel for the Petitioners are as under :

The Petitioner company is engaged in the manufacture of petrochemicals. For the purpose of manufacturing petrochemicals the petitioner company uses 3 Ethyl Hexanol (EH) as a raw material/input. EH is a non-potable industrial alcohol. During the period 13-8-1979 to 1-3- 1984 the petitioner imported various quantities of EH paying additional duties of customs (under Section 3 of Customs Tariff Act, 1975) amounting to Rs. 57,80,183/- equivalent to the excise duty payable under T.I. 68 of the Central Excise Tariff.

2. On 18-12-1986 this Hon''ble Court by a judgment and order in the matter of Raman Kantilal Bhandari Vs. Union of India and others, (This judgment was ultimately upheld by a Division Bench of this Hon''ble High court in 1990 (29) ECC 152 held that non-potable industrial alcohol was not liable to pay additional duty of customs. On the rendering of the aforesaid decision the petitioner realised its mistake and filed refund applications on 3-3-1987 and 24-3-1987 with the Assistant Collector of [Central] Excise.

3. There was no response to the refund applications from the department. The petitioner was constrained to file this petition.

4. Further in view of the fact that the refund applications were filed beyond a period of 6 months from the date of payment of duty, the respondents being creatures of statutes were bound to reject the refund applications under the Customs Act as held by the Supreme Court in the matter of Miles (India) v. Asstt. Collector 1987 (30) E.L.T. 641. A petition under Article 226 of the Constitution was the only remedy. Therefore, the petitioner prayed that the original orders of the respondent levying and collecting additional duty on EH when imported by the petitioner be quashed and set aside and the respondents be ordered to grant a refund of Rs. 57,80,183/- alongwith 18% interest thereon.

5. The Petitioner submits that the Limitation prescribed by the Customs Act will not apply where the duty has been paid under a mistake of law or the duty has been recovered without the authority of law.

6. It is not possible to accept this contention. The Division Bench of this Court in Writ Petition No. 1656/1987 and others decided on 6th/7th March, 1996 reported in 1996 ECR 155 (Bom). (Pfizer Ltd. & Ors.) considered the question whether refund of exercise duty paid because of erroneous interpretation of Tariff or exemption notification or ignorance of such notification, despite the fact that such applications were filed before the authority beyond the prescribed period of six months as provided u/s 11B of the Central Excises and Salt Act, 1944 can be granted or not. It was held that it cannot be granted particularly after 20th September, 1991 in view of amending Act 40 of 1991. Section 27 of Customs Act is pari materia same as Section 11B of the Central Excises and Salt Act, 1944.

7. It was inter alia held by the Division Bench in Pfizer Ltd. & Ors. case that for getting benefit of the exemption notification it is for the assessee to establish that the goods manufactured by him come within the ambit of the said exemption notification. Further, it is also held that assessee has to establish that the conditions which are stipulated in the exemption notification are complied with by him and there is no question of any liberal construction to extend the terms and the scope of the exemption notification, as the notification is required to be strictly construed and the assessee has to bring himself within the ambit of a notification.

8. It was further held that :-

"24. The Petitioners'' claim would clearly be barred by delay and laches as it was the duty of the assessee to approach and apply to the authority for grant of exemption by showing that the Petitioners were satisfying all the conditions precedent and have followed the procedure prescribed therein.

25. It is to be borne in mind that issuance of an exemption notification in respect of a particular item does not render that item non-excisable. It only enables the manufacturer to claim exemption on the conditions specified therein being

satisfied. [Re : Vee Kayan Industries, Batala Vs. Collector of Central Excise, Chandigarh, . So the levy and payment of excise duty in such cases are under the provisions of the law and cannot be said to be without authority of law or illegal.

26. Further, the Assistant Collector has rightly refused to consider the said application for refund as it was filed beyond the period prescribed u/s 11B of the Act. This aspect is also covered by the decision of the Supreme Court in the case of Paros Electronics (P) Ltd. Vs. Union of India and Another, . In that case, while dealing with the applications u/s 27 of the Customs Act, 1962 the Court held that in the proceeding which emanated for levy of duty the order became final and without having that order set aside by a competent Court there would be no question of grant of refund merely on the ground that in some other case a different view was taken, even if the payment is made under mistake of law. As long as the order which became final stands, the authority cannot grant refund. The Court further held that if the application is u/s 27 of the Customs Act, then the authority being a creation of the statute, must act within the ambit of that provision and if the application is delayed he has no alternative but to reject it as barred by limitation."

9. Further the question is also concluded by recent decision rendered by Supreme Court in case of Union of India v. Kirloskar Pneumatic Company reported in 1990 (84) E.L.T. 401 (SC), wherein the Court after considering the provisions of Section 27(3) and (4) of the Customs Act, 1962 has held that it is not permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. It is held that power conferred by Article 226/227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law.

10. In this view of the matter, this petition is rejected.

11. Rule discharged. No order as to costs.