(1990) 10 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5021/89

Hemraj Udyog APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 29-10-1990

Acts Referred:
Central Excise Rules, 1944 — Rule 57K

Citation : (1991) 33 ECC 299 : (1992) 61 ELT 238

Hon'ble Judges : V.S. Dave, J

Bench : Single Bench

Advocate : V.K. Singhal and R.B. Mathur, for the Appellant; U.D. Sharma, for the Respondent

Final Decision : Allowed

Judgement

V.S. Dave, J.—The petitioner is a firm carrying on the business of manufacturing of vanaspati from the oil which is purchased from the market. The Central Government had issued a notification on 1-3-1987 purported to be under Rule 57K of the Central Excise Rules, 1944 wherein it was provided that in respect of the input of the vegetable oil, as mentioned in the table given under the aforesaid notification, if the vegetable oil is used in the final product i.e. the vanaspati, the party would be entitled for the credit for use of such inputs in the manufacture of final product and the rate of credit would be given as specified in the notification which is Annexure-1 on record. Central Government issued another notification on 25th August, 1989 by which the notification dated 1st March, 1987 was withdrawn. The petitioner, upto the period of 1st March, 1987 and 25th August, 1989, had purchased solvent extracted mustard oil, solvent extracted rapeseed oil and ricebran oil, and solvent extracted cottonseed oil for use in the manufacture of vanaspati and did use it. The petitioner''s grievance is that the respondent No. 2 has applied the notification dated 25th August, 1989 with retrospective operation and did not give the credit to the petitioner which accrued upto 24th August, 1989 in pursuance of the notification dated 1st March, 1987 which has gone to the extent of Rs. 23,52,158. The petitioner was directed to make reverse entry on the credit scheme in the books by the Superintendent, Central Excise and it is for this reason that the present writ petition has been filed praying that it should be declared that the petitioner was entitled to the credit of Rs. 23,52,158 in respect of the oil which was purchased for the purpose of manufacture of Vanaspati in terms of notification dated 1st March, 1987.

2. I need not detain myself further and record the elaborate arguments because notification dated 25th August, 1989 was under challenge before this Court in similar writ petitions and one being SB Civil Writ Petition No. 3791/89 - PVP Limited, Jaipur v. Union of India. The aforesaid writ petition has been allowed on 8th October, 1990 by a detailed order passed by my brother Hon''ble S.N. Bhargava J. Besides the aforesaid judgment to which I will make a reference, it is relevant to mention that the notification dated 25th August, 1989 was absolutely a short-levied notification inasmuch as by notification dated 11th October, 1989, i.e., almost within a couple of months the scheme which was in vogue in view of the notification dated 1st March, 1987, was restored. However, some conditions were imposed.

3. Be that as it may, in PVP Ltd. v. Union of India (supra), this Court held that notification dated 25th August, 1989 could not be retrospective in operation. The Court also considered that the principles of promissory estoppel were also applicable in the matter and thus the petitioner earned credit with regard to the imports and the same could not be taken away by the subsequent notification as Union of India was estopped by principles of promissory estoppel.

4. I am in respectfully agreement with the view taken by a very well reasoned judgment of my brother Hon''ble S.N. Bhargava J. and allow this writ petition. Respondents are directed to permit the petitioner to utilise the credit already earned by them in terms of notification dated 1st March, 1987 upto 24th August, 1989 and if any duty has been recovered in excess than the one payable by the petitioner in terms of notification dated 1st March, 1987, the same shall be refunded to the petitioner. It is, however, made clear that the petitioner shall not be entitled to any concession or exemption on the basis of notification dated 1st March, 1987 nor they will be able to take any credit for the utilisation of non-traditional oil during the period from 25th August, 1989 to 10th October, 1989. There will be no order as to costs.

