

(1991) 08 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 2208 of 1991

I.C.I. India Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A
Customs Act, 1962 — Section 27, 27(1)
Limitation Act, 1963 — Article 113, 23

Citation : (1992) 60 ELT 529

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Samarjit Ghosh, for the Appellant; S.K. Mitra, for the Respondent

Judgement

Suhas Chandra Sen, J.—The Petitioner placed an order on its parent Company, Imperial Chemical Industries, PIC, U.K. for supply of pump spare parts. On 27th June, 1982, the petitioner, in anticipation of the arrival of the goods, filed a Bill of Entry and on assessment paid a sum of Rs. 52,792.80. Thereafter on 30th August, 1982, a broken case containing some imported goods landed at Calcutta Port Trust. On 12th November, 1982, the Insurance survey was carried out by the Customs Shed Appraiser and the said survey revealed that the broken case contained some other materials. On 12th December, 1982 the petitioner abandoned the said broken case and the Dock Customs Authorities sent the said Bill of Entry to the Custom House. The Customs Authorities accepted the abandonment of the broken case by the petitioner on 28th January, 1983.

2. These facts are not in dispute. The goods that the petitioner wanted to import did not arrive at Calcutta Port. As such, there was no question of payment of any customs duty. The only trouble of the petitioner was that he had, in anticipation of arrival of the goods, paid the duty by filing the Bill of Entry.

3. The case of the Customs Department is that u/s 27, a claim for refund of duty has to be made before the expiry of six months from the date of payment of

duty. In the instant case, the petitioner had paid the duty on 28th June, 1982. Insurance survey took place on 12th November, 1982. There was undoubtedly some laches on the part of the petitioner and the petitioner applied only on 13th February, 1983 to the Assistant Collector of Customs for refund of Rs. 52,792.80. The Assistant Collector of Customs rejected the said application on 29th June, 1983. Thereafter the petitioner preferred an appeal to the Appellate Collector of Customs which was again dismissed. On further appeal on 18th December, 1989, the Customs, Excise and Gold (Control) Appellate Tribunal rejected the petitioner's claim observing that the relief prayed for by the petitioner could only be granted on a writ petition. The petitioner thereafter made this writ petition.

4. On behalf of the petitioner reliance was placed on a judgment of the Supreme Court in the case of *Salonah Tea Co. Ltd. etc. v. Superintendent of Taxes, Nowgong and Ors. etc.* : 1988(33)ELT249(SC) where it has been held as follows :-

"Under Article 113 of the Limitation Act, 1963 the limitation was the period of three years from the date the right to sue accrues. It may be noted that in the instant case u/s 23 of the Act, it was provided that the Commissioner shall, in the prescribed manner refund to a producer or a dealer any sum paid or realised in excess of the sum due from him under this Act. Section 23 applies only in a case where money is paid under the Act. If there is no provision for realisation of the money under the Act, the act of payment was ultra vires, the money had not been paid under the Act. In that view of the matter Section 23 would not apply and the State is liable to refund the tax as being recovered without the authority of law."

5. Mr. S.K. Mitra, Advocate appearing on behalf of the respondent has invited my attention to another judgment of the Supreme Court in the case of *Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills Ltd., Jalandhar*, where the Supreme Court held as follows :-

"Section 11A of the Act would come into operation only when the demand is on account of Central Excise Duty short levied or not levied or refunded erroneously. Where a duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the General Law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act."

6. I do not find any contradiction in these two judgments. It has been laid down that the statutory authorities are bound by the provisions of the statute and they cannot go beyond the statute to decide a controversy. If the statutory period of

limitation has been exceeded then an assessee may lose his right of getting refund under the statute. But unlike the statutory body, a writ court is not fettered by the statutory rules.

7. What has happened in this case is that the petitioner had paid certain amount of money by way of tax in anticipation of arrival of goods for which it had placed an order. When the container, which should have contained the goods, came it was found, on examination, that the goods ordered for had not arrived at all. The petitioner abandoned all claims in respect of the goods which had arrived by the container in broken pieces. Therefore, the goods for which the petitioner had placed an order did not arrive and cross the Customs barrier at all and no question of any customs levy arises. The petitioner's case do not come within the four corners of the Customs Act at all. The petitioner had paid the duty, in anticipation of arrival of certain goods, which did not arrive at all. The petitioner therefore became entitled to get refund of duty which was paid in mistaken anticipation. A case like this will not come strictly within the ambit of Section 27 of the Customs Act, as it stood, at the material time in the year 1982. The provisions of Section 27 apply in the case of any import made by an individual for his personal use or a Government or an educational research or a charitable institution or hospital under clause (a) of Sub-section (1). In case of any other import, provisions of clause (b) of Sub-section (1) of Section 27 will apply. But in this case, no import has taken place at all. In a case, where money was paid in advance on mistaken assumption, but no import actually took place, the Customs Authority cannot refuse refund of the money on the ground of limitation u/s 27 of the Act.

8. In that view of the matter, the Writ Petition succeeds. The Customs Authorities are directed to refund the sum of Rs. 52,793.80 to the petitioner within a period of four weeks from date.

The Writ Petition is finally disposed of as above.

All parties are to act on the signed copy of this dictated order on the usual undertaking.