(1979) 03 CAL CK 0033

In the Calcutta High Court

Case No : Civil Rule No. 12200 (W) of 1975

Inchek Tyre Limited APPELLANT

Vs

Assistant Collector of Customs and Others RESPONDENT

Date of Decision : 02-03-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 265
Tariff Act, 1934 — Section 27

Citation : (1979) CENCUS 360 : (1979) 4 ELT 236

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bimal Chandra Basak, J.—This is an application under Article 226 of the Constitution of India praying for a writ in the nature of Certiorari for quashing the impugned orders passed being Annexures Cl, C2, D and E to the petition.

2. The facts of this case are as follows : -

The petitioner carries on business as manufacturer of Rubber tyres. In course of its business the petitioner has to import insoluble sculpture in bulk quantities which are required for the use in the manufacture of rubber tyres.

According to the petitioner sulphur is exempted from the whole of the Customs duty leviable thereon under the Indian Tariff Act, 1934 by virtue of a notification, dated August 20, 1965.

It is alleged, between November, 1969 and April, 1971, the petitioner imported a number of consignments of sulphur particulars whereof are given in the petition.

3. It is alleged that the goods fall under Item 28(3) of the Indian Customs Tariff and as such same were exempted by virtue of the aforesaid notification. But the Customs Authorities wrongfully levied duty on each of the said consignments alleging that the goods in question fall under Item No. 28 of the Indian Customs

Tariff being ''Drugs and Chemicals'' the duty levied being 60 per cent, ad valorem duties,

4. It is alleged, as the goods covered by Bills of Entry arrived almost at the same time the petitioner in Older to avoid demurrage charge cleared the goods by paying the duty which according to the petitioner was referred under Item 28. Thereafter it is alleged that the petitioner''s application for refund was rejected by the Assistant Collector of Customs. On appeals preferred by the petitioner the Appellate Collector of Customs allowed the petitioner''s claim for refund.

5. It is alleged thereafter on December 18, 1971 the Government of India issued show cause notice upon the petitioner calling upon it to show cause why the said order of the Appellate Collector of Customs should not be annulled. It is alleged that the said show cause notice was not proceeded with.

6. It is alleged that before the disposal of the appeals mentioned above, other consignments of insolvable sulphur arrived and the Customs authorities wrongfully claimed to levy duty on the said goods in the same manner as they did with regard to the first two consignments and the petitioner cleared all the goods by paying duty wrongfully levied as aforesaid to avoid demurrage and other costs and expenses. Particulars of the same are given in paragraph 9 of the petition. It is stated, save and except for the duty on the goods mentioned in item Nos. 1 and 2 the petitioner has got refund in respect of others. In respect of those two consignments the petitioner made an application for refund which according to the petitioner was received by the Assistant Collector of Customs on May 29, 1971.

7. It appears that each of the said application for refund was rejected by the Assistant Collector of Customs by an order passed on June 6, 1971 on the ground that each of the application for refund was preferred out of time. The appeals preferred by the petitioner were also rejected on the same ground and the Revision petition before the Central Government was also rejected. The petitioner herein is challenging the said order of the Assistant Collector of Customs, Appellate Collector of Customs and the Central Government.

8. The contention of the petitioner is that the petitioner has got the right to refund inasmuch as the duties were unlawfully collected. This is a case of an imposition without the authority of law. The petitioner has its fundamental right to the refund of this money and therefore the question of limitation does not and can not arise, In that view of the matter it is submitted that the petitioner has got such right irrespective of any provision for refund in this statute.

9. In my opinion, this application is misconceived. If an authority has illegally collected an amount the aggrieved person is entitled to the refund of the same. This Court cannot issue a writ in connection thereto. However, if such right of refund is conferred by the statute and if there is any condition imposed to the exercise of that right, that would be binding on that person concerned and he cannot claim his right to refund without such condition. Any such provision in any

statute is legal and valid. Reference may be made in this connection to a decision of the Supreme Court in the case of Burmah Construction Co. Vs. The State of Orissa and Others, which has been followed in other cases. In my opinion, in this case the petitioner''s right to refund is governed by Section 27 of the Act.

Admittedly, in the present case the petitioner made such applications out of time. Accordingly, even if the amount was unlawfully collected the petitioner''s right to refund is governed by the statute which provides the conditions which has not been satisfied in this case. It is not open to the petitioner to contend that the petitioner has such a right independent of the statute. First of all that question does not arise in this case. The petitioner has pursued such remedy under the statute. The petitioner has made such application u/s 27 of the Act to the Assistant Collector of Customs. Further under the provisions of this Act it has preferred an appeal to the Appellate Collector of Customs and thereafter a revision petition Jo the Central Government. Accordingly, it is not open to the petitioner in case to contend that he has got some other right conferred by the statute. Further, I am of the opinion that when a statute makes such right of refund the petitioner is bound by such conditions imposed by such statute which has conferred such right. My attention has been drawn to a judgment of Madras High Court reported in CENSUS 1978 / 77D : 1977 E.L.T. 166) where the learned single judge has held that in view of Article 265 of the Constitution of India irrespective of the period of limitation u/s 27, a citizen has a right to recover such amount. I am unable to accept the correctness of such judgment in view of the Supreme Court decision referred to, above which was not even considered by that judgment.

10. Accordingly this application is dismissed. The Rule is discharged. Interim orders, if any, are vacated. There will be no order as to costs.