

(1976) 03 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 4024 of 1973

Indian Aluminium Co. Ltd.

APPELLANT

Vs

Supdt. of Central Excise and Others

RESPONDENT

Date of Decision : 19-03-1976

Acts Referred:

Central Excise Rules, 1944 — Rule 11
Tariff Act, 1934 — Section 2A

Citation : (1978) 2 ELT 650

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Judgement

V.P. Gopalan Nambiyar, J.—The petitioner, Indian Aluminium Company Ltd., Alupuram, Alwaye, paid excise duty in respect of certain items, which, it now claims, were non-dutiable items. The items in question were properzi rods. The First Schedule of the Central Excises and Salt Act, which provided for the tariff in respect of excise duty, in so far as the same is material, originally stood as follows:

-----				Item	No.
Description	of	Goods	Rate	of	duty
-----					27.
ALUMINIUM- (a) any crude from including ingot, Three hundred bars, blocks, slabs, billets, shots and pellet. rupees per metric tonne. (b) Manufactures, the following, namely, Five hundred plates, sheets, circles, strips and extruded rupees per shapes and sections in any form or size. metric tonne. (b) Foils, that is a product of thickness Six hundred (excluding and backing) not exceeding 0.16 rupees per millimetres metric tonne (c) pipes and tubes Ten per cent ad volorem. -----					

By the Finance Act of 1969, the above item was amended, and after Clause (a), a new clause viz. (aa) was added, which reads as follows:-

"(aa) Wire bars, wire roads and castings not otherwise specified."

The petitioners' case, in short, is that this amendment embodied in Clause (aa) having been effected only by the Finance Act of 1969, it was not liable to pay the duty on properzi rods at all till the commencement of the amendment and that the duty wrongly paid by it from 1966 till that, date was liable to be refunded. On this ground, the petitioner made an application for refund, a copy of which has been produced with counter-affidavit as Ext. R 8. It is to be noted that in Ext. R. 8 the petitioner referred to the fact that Central Excise Duty and Special Excise Duty at Rs. 1,020/- per tonne had been collected from them on indigenously manufactured properzi rode; and further prayed that Ext. R, 8 letter may also be treated as the claim for refund of the duty so collected from September 1966, till date (the date of Ext. R 8 was 29th February, 1969). It was also stated that the petitioner would submit their usuel claim for refund of duty already paid, as soon as it received the orders. By Ext. P 1 order dated 17.6.1968 the Assistant Collector, rejected the application of the petitioner. An appeal was preferred to the Collector of Central Excise; Ext. P 2 is the copy of the appeal. By Ext. P 3 order, the appellate authority rejected the appeal. The petitioner preferred a further revision (copy of which is Ext. P4) to the Government of India, Ministry of Finance. This was allowed by a short order, Ext. P 5, which reads as follows:

"Having regard to all the facts and circumstances of the case, the Government of India are pleased to allow the revision application and direct that consequential relief be granted to the petitioner."

2. The petitioner's complaint is that Ext. P 5 was not implemented and no refund was granted to the petitioner, despite the clarifications made by the petitioner in respect of the quantum of duty to be refunded (vide Exts. P 6 to P-13). Ex. P 14 is produced by the petitioner as a copy of the public notice regarding the decision of the Central Board of Excise and Customs, to the effect that Aluminium Wire Rods, other than extruded, are not covered by any of the items, in the Central Excise Tariff and accordingly they are not, on import, liable to additional duty u/s 2 (A) of the Indian Tariff Act.

3. It was on the basis of the above facts and materials that the petitioner prayed for refund of the Excise Duty paid, in respect of which, the petitioner claimed that an order for refund had been passed in its favour by Ext. P 5. Counsel for the respondents submitted before me that there was no orders for refund in Ext. P 5 and the consequential order directed to be given effect to in Ext. P 5 cannot be regarded as a refund of the Excise Duty paid. I cannot agree. I have already referred to the prayer made in Ext R 8 to treat it as an application for refund. Ex. P 4 in its concluding part prayed for refund of excise duty collected till February 1969. Ext. P 5 clearly stated that the petitioner was entitled to refund of Excise Duty. In this background and in the light of the application-Ext. R 8, and the revision petition Ext. P 4, which were being dealt with, I have little doubt that the consequential order made and contemplated by Ex. P 5 was an order of refund and nothing else.

4. Counsel for the respondents then submitted that the order refund, if any, could only be in respect of duty collected from properzi rods and that what was collected from the petitioner, was not the duty on properzi rods but duty on the Aluminium in the crude form. Whatever be the feasibility of this contention, as to which I say anything, it seem to me that such a contention is not open to the respondents in view of the specific order Ext P5. The application for refund, Ext. R-8, and the revision petition Ext. P-4, all specifically described the article in respect of which the duty had been collected and in regard to which refund was prayed for as properzi rode. It was on that basis that Ext. P 5 order was passed. The question now is one of implementing the order. It is no longer open to the respondents at this stage to urge contentions which should have been agitated at the stage of revision. The counter affidavit indeed, in one place, seems to take up the position that the revisional order is illegal and null and void. This, I am afraid, is very much to be deprecated vide The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, .

5. Counsel for the respondents attempted a further argument; it was said that under Rule 11 of the Central Excises and Salt Rules, no duties are to be refunded, unless the claimant makes an application for such refund and lodges it within three months from the date of such payment, or adjustment. On the strength of the above, it was argued that the claim for refund of the duty from 1966 was unsustainable. Whatever may be the correct position in respect of this matter, the respondents are faced with this position; that there is an adverse order against them by which they are bound, which, as I understand, has directed a refund of the Excise Duty Collected from the petitioner. At the stage of the implementation of the said order, it is no longer open to the respondents to urge limitation under Rule 11 as a bar to the rights of the petitioner.

6. Counsel for the petitioner attempted to argue before me that the Contention of the respondents that although a duty may not be leviable on properzy rods, it is eligible in respect of crude aluminium, is itself unsound. Whatever be the position, in law, in view of Ext. P-5 order passed on Ext. R-8 and Ext. P 4, the contention that the duty was not levied on pr0perzi rods is no longer open. In that view, it is unnecessary to examine the contention on the merits, and I express no opinion on the same.

7. Having regard to the conclusiveness of Ext. P 5 order, I allow this original Petition and direct the respondents to refund the amount of Rs. 1,01,37,122.70 as prayed for by the petitioner. It will be open to the respondents, instead of making the actual refund of the said amount, to adjust the same against the payments due from the petitioner-company. There will be no order as to costs.