(2010) 04 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Indian Oil Corporation Ltd. APPELLANT

Vs

Commissioner of C. Ex. RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11B
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 27

Citation : (2010) 256 ELT 232

Hon'ble Judges : Mehinder Singh Sullar, J;Ashutosh Mohunta, J

Bench : Division Bench

Judgement

Ashutosh Mohunta, J.—The Indian Oil Corporation, Panipat Refinery, Marketing Complex, Panipat cleared a consignment of 1594.460 KL HSD under bond to Jammu Depot on 9-8-1998. The Indian Oil Corporation was not required to pay any duty at that time. However, despite the fact that they were not liable to be pay the duty, they paid the duty and thereafter credited the duty paid, in their personal ledger accounts.

2. The Assistant Commissioner, Central Excise vide letter dated 7-6-1999, asked the Indian Oil Corporation to file a refund application for the duty already paid. Accordingly, an application was filed on 7-7-1999, however, the refund application was rejected on the ground that the same is time barred. It was held that the application for refund has been filed beyond the period of 6 months from the date of debit of the duty.

3. On the basis of the aforementioned facts, the petitioner filed an application before this Court for referring the case and this Court vide order dated 12-7-2007, directed the Tribunal to refer the following questions of law for adjudication:

(1) Whether the claim for refund filed on 7-1-1999 within six of the second debit on 6-5-1998 is barred by limitation?

(2) Whether re-credit of the amount in the PLA with the permission of the Superintendent of Central Excise was permissible?

(3) Whether a claim for refund was to be filed when the debit was made on account of clerical error and was not a duty of excise refundable u/s 11B?

(4) Whether a direction for recovery of any amount can be made without issuance of a notice u/s 11A?

4. Counsel for the Revenue submits that dates given in the above said questions of law are erroneous, as it should have been 7-7-1999, instead of 7-1-1999 and date for second debit was 6-5-1999, instead of 6-5-1998. We take the aforementioned dates as given by the counsel for the Department to be correct itself.

5. A perusal of the facts shows that the Indian Oil Corporation, Panipat Refinery were not liable to pay any duty on the goods cleared to bonded warehouses. Despite this, they paid the duty and subsequently on a letter written by the Assistant Commissioner, Central Excise filed an application claiming refund of the duty paid by them erroneously. The rejection of application by the Central Excise authorities on the ground that application has been filed beyond the period of 6 months from the date of crediting the amount in their personal ledger accounts cannot be sustained, because the State cannot enrich itself unjustly when no duty was liable to be paid by the petitioner. In Indo Rama Synthetics (India) Limited Vs. Union of India and Others, , a Division Bench of Delhi High Court has held that "however, having regard to Article 226 of the Constitution of India and general principles of law and equity, State not to unjustly enrich itself, hence, respondents should consider matter on merits ignoring provisions of Section 27 ibid.

6. In the present case also, as the petitioner was not liable to pay any duty, therefore, the Tribunal could not reject their application for refund, as it would tantamount to unjust enrichment of the State.

7. Thus, question No. 1 is answered in favour of the assessee and against the Revenue. In view of the answer to question No. 1, questions Nos. 2, 3, & 4 do not survive for adjudication.

8. The reference is answered in the aforementioned terms.