
(1984) 06 BOM CK 0015

In the Bombay High Court

Case No : Appeal No. 418 of 1979 in Miscellaneous Petition No. 1239 of 1974

Industrial Cables (India) Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-06-1984

Acts Referred:

Tariff Act, 1934 — Section 2A

Citation : (1989) 23 ECR 264

Hon'ble Judges : Lentin, J;Kania, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Lentin, J.—This appeal is the sequel to the dismissal of the appellant's writ petition by the learned single Judge.

2. Hereunder the facts:

(A) The appellant-Company carries on business as manufacturer of power cables and A.C.S.R. Conductors at Rajpura, Punjab. Between 1962 and 1965, the appellant imported electrolytic aluminium rods (other than extruded) through the Port of Bombay and paid countervailing duty aggregating to Rs. 3,72,863.04.

(B) On 17th/18th March, 1972, the Gujarat High Court delivered a judgment in M/s. Prem Conductors Pvt. Ltd. v. Assistant Collector of Customs (Special Civil Application No 909 of 1970 with Special Civil Application Nos. 910 and 911 of 1970) holding that electrolytic aluminium (other than extruded) rods were not liable to countervailing duty u/s 2A of the Indian Tariff Act, 1934. (That judgment is pending in appeal in the Supreme Court. We are however assured by both learned Counsel that the same would have no bearing on our proceeding with this appeal.)

(C) According to the appellant, it was then that the appellant became aware that the amount of Rs. 3,72,863.04 paid as countervailing duty to the Department

had been paid under a mistake of law and in the genuine albeit mistaken belief that it was payable.

(D) Accordingly on 6th April 1974, the appellant applied to the Assistant Collector for refund. No response. This was followed by a reminder dated 14th June, 1974. On 10th September 1974, the Assistant Collector asked the appellant to file the refund claim in proforma. The appellant did so on 11th October 1974 by filing 13 refund applications.

(E) On 20th November 1974, the Assistant Collector passed 7 orders, rejecting the appellant's claims on the ground that they were time-barred u/s 27(1) of the Customs Act, 1962.

(F) On 17th December 1974, the appellant filed a writ petition for setting aside the orders and claiming refund of Rs. 3,72,863.04. That writ petition was dismissed by the learned single Judge on 10th August 1979. Hence the present appeal.

3. Mr. Talyarkhan, the learned Counsel appearing on behalf of the appellant, urged that the countervailing duty aggregating to Rs. 3 72 863 04 had been recovered by the Department without authority of law and had been paid by the appellant to the Department under a genuine and bona fide belief that the same was payable and that it was only after the Gujarat High Court delivered its judgment on 17th/18th March 1972 that the appellant-Company came to know its mistake in making the payments.

4. On the other hand, it was urged by Mr. Deodhar, the learned Counsel appearing on behalf of the respondents, that this was a matter involving a disputed question of fact as to the point of time when the appellant came to know that the countervailing duty had been paid under a mistake. He further urged that if the appellant had exercised due care the appellant would have known of a Public Notice issued as far back as 15th October 1967 exempting electrolytic aluminium wire rods from countervailing duty, with the result that the petition having been filed on 17th December 1974, was barred by the law of limitation. No other ground was urged on behalf of the respondents.

5. Coming to the Public Notice relied on by Mr. Deodhar in September 1967 it had been decided by the Central Board of Excise and Customs, New Delhi, that non-extruded electrolytic aluminium rods were not liable to countervailing duty u/s 2A of the Indian Tariff Act. That decision was made manifest by way of a Public Notice dated 15th October 1967. That Public Notice was signed by the Collector of Customs Madras, and was pasted in the Customs House at Madras. The appellant says that being an importer in Punjab, the appellant was in the dark about this Public Notice pasted in the Customs House at Madras and that it was only when the Gujarat High Court delivered its judgment that the appellant came to know of this Public Notice as it was referred to in that judgment.

6. On the other hand, Mr. Deodhar was unable to satisfy us that any such Public

Notice had been pasted in the Customs House in Bombay or that its contents were made public in Bombay. All that Mr. Deodhar could do (for no fault of his own) was to invite our attention to the affidavit-in-reply filed by the Assistant Collector of Customs where it has been stated in para 3 that this Public Notice "was also published for information of importers, clearing agents and the public". Totally vague and most unsatisfactory Pray, was it published in Bombay ? If so, when ? Where ? By what means ? Had any importer in Bombay availed himself of the benefit of this Public Notice ? If this Public Notice had been published in Bombay nothing could have been simpler for the Assistant Collector to have given this basic information in his affidavit-in-reply instead of contenting himself with the elasticity of language resorted to by him.

7. It is highly improbable and for that matter almost inconceivable that an importer and a businessman would blithely go on paying duty to the Department which he knew he was under no obligation to pay.

8. It is therefore obvious that the appellant could not have known of the Public Notice pasted in the Customs House at Madras until it was brought home to him by the judgment of the Gujarat High Court. In *D. Cawasji and Co. and Others Vs. State of Mysore and Another*, , observing that where a suit will lie to recover money paid under a mistake of law, a writ petition for refund of tax within the prescribed period of limitation, viz. 3 years of the knowledge of the mistake would also lie, it was held that the starting point of limitation would be the date on which the judgment declaring void the particular law under which the tax was paid was given, as that would normally be the date on which the mistake becomes known to the party. This ratio was followed by the Division Bench of this Court in *Maharashtra Vegetable Products v. Union of India* (1981) E.L.T. 468 : 1982 ECR 929 and by Madan J. (as he then was) in *Golden Tobacco Co. v. Union of India* (1982) ECR 584D.

9. In the light thereof, the starting point of limitation was 18th March 1972 when the Gujarat High Court delivered its judgment. And within 3 years thereof the present writ petition was filed asking for refund of the duty indisputably collected without authority of law. 1

10. That it was collected without authority of law is not even disputed by Mr. Deodhar with his habitual fairness, and rightly so. It is trite to say that it is the obligation of the Department to refund the excess of duty collected without authority of law. *Patel India Private Limited Vs. Union of India and Others*, , followed by a Division Bench of this Court in *Maharashtra Vegetable Products Pvt. Ltd. v. Union of India* (1981) E.L.T. 468 : 1982 ECR 929D and reiterated by another Division Bench of this Court in *Wipro Products Ltd. v. Union of India* 1981 E.L.T. 531 : 1981 ECR 380D . In *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, , it was observed as under:

...Where public bodies, under colour of public laws, recover people's money, later discovered to be erroneous levies, the Dharma of the situation admits of no

equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of "alternative remedy" since the root principle of law married to justice, is ubi jus ibi remedium....

11. In summation : (a) duty was collected by the Department without authority of law; (b) the appellant came to know of its mistake in paying such duty when the Gujarat High Court delivered its judgment on 17th/ 18th March 1972; (c) the writ petition was filed within 3 years thereafter; (d) restitution must be made. It is as simple as that.

12. The appeal is allowed and the judgment and order of the learned single Judge are set aside. The Department shall within 4 weeks from today make the requisite calculations, if any, of the countervailing duty paid by the appellant between 1962-1965 and shall within 2 weeks thereafter refund to the appellant the countervailing duty found payable. Rule is made absolute accordingly.

The respondents shall pay to the appellant the costs of the appeal.