
(1969) 09 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1362 of 1965

J and J. Dechane

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-09-1969

Acts Referred:

Central Excise Rules, 1944 — Rule 11
Central Excises and Salt Act, 1944 — Section 37(2)(1)
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 72

Citation : (1978) 2 ELT 487

Hon'ble Judges : Obul Reddi, J; Madhava Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Madhava Reddy, J.—The short question that arises for consideration in this writ petition is whether the excess of excise duty collected from the petitioner by the respondents could be directed to be refunded in exercise of the extraordinary jurisdiction of this Court under article 226 of the Constitution of India.

2. It is stated by the petitioner that while the excise duty was leviable at the rate of 2?% the respondents collected it at the rate of 7?%. This mistake was discovered by him only in a subsequent year during which excise duty was collected at 2?%. The amount of excise duty collected in excess, according to the petitioner; is Rs. 9,322.72 P. On discovering this mistake, a petition for refund was filed by him on 23.6.1965. But the said petition was rejected in view of Rule 11 of the Central Excise Rules, 1944, which prescribes a period of three months within which such an application should be filed. Admittedly, the petition for refund was tiled beyond three months under Rule 11 and therefore the respondents justify the order of rejection and contend that no writ of mandamus ought be issued. It is, however, significant to note that the respondents do not deny having collected excise duty at the rate of 7?% instead of 2?%. Even while rejecting the claim for refund, this fact was not denied ; nor is it denied now in

the counter affidavit. The collection of excise duty at the rate of 7½% therefore cannot but held to be otherwise than in accordance with law. Consequently the respondents are not entitled to retain the amount and on a claim being made in this behalf are liable to refund the same.

3. Mr. K. Srinivasa Murthy, the learned counsel for the petitioner, contended that Rule 11 which prescribes a period of three months for filing any petition for refund is ultra vires of the power of the rule making authority in view of Section 37(2)(1) of the Central Excises and Salt Act, 1944. We, however, do not think it necessary to go into the vires of the rule for the purposes of this writ petition in view of the fact that admittedly the claim was made within a period of three years. It cannot be disputed that notwithstanding the rule, any tax or duty illegally collected and paid under a mistake of law can always be recovered by way of a suit vide *Kirpal Singh Duggal Vs. Municipal Board, Ghaziabad*, . The period of limitation for the purpose of filing such suits is three years. The only question therefore is while the petitioner is entitled to claim refund and also Institute a suit for such a refund in view of the fact that he could have laid an action for refund in a civil Court, this Court should refuse to grant the said relief in exercise of its extraordinary jurisdiction. A similar question arose for consideration before their Lordships of the Supreme Court in *State of Madhya Pradesh v. Bhailal Bhai* AIR 1964 SC 1806. in which their Lordships held that where the tax assessed and paid by the dealer is declared by a competent court to be invalid in law, the payment of tax already made is one made under a mistake within Section 72 of the Contract Act and so the Government to whom the payment has been made by mistake must in law repay it. In this respect, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India has power for the purpose of enforcement of the fundamental rights and statutory rights to give consequential relief by ordering repayment of money realised by the Government without the authority of the law. In the said case, where a suit for refund of the amount was not barred by limitation, the Supreme Court directed the refund of such amount. Following the view taken by their Lordships of the Supreme Court, we direct the respondents to refund to the petitioner the excise duty collected in excess of 2½%. It is contended by the learned counsel for the Central Government that the exact amount of duty may be left to be ascertained by the authorities concerned. Therefore, we direct the refund of such amount as may be found to have been collected in excess of 2½%. With the aforesaid direction, this writ petition is allowed and a writ of mandamus will issue accordingly. The petitioner will have his costs. Advocate's fee Rs. 200/- (Rupees two hundred only).