(1996) 09 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 331 of 1982

Kamani Engineering Corporation Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 173J
Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 226

Citation : (2003) 159 ELT 125

Hon'ble Judges : M.P. Singh, J;A.K. Parihar, J

Bench : Division Bench

Advocate : B.P. Agarwal, for the Appellant; Suresh Pareek, for the Respondent

Final Decision : Allowed

Judgement

M.P. Singh, J.—The petitioner has claimed the refund of the excise duty wrongly recovered under Item No. 26-AA(ia) of the Central Excises & Salt Act, 1944 (''the Act No. 1 of 1944'')

2. The petitioner is a public limited company within the meaning of the Companies Act. It manufactures iron and steel products which were excisable goods.

3. The Government of India, Ministry of Finance (Department of Revenue), issued Notification No. 306/63, Central Excise, dated 30th of November, 1963, which was subsequently amended in 1965 and then in 1968. The Government vide these notifications exempted the following items from payment of whole of the excise duty leviable on such products :-

"(i) fresh unused re-rolling scrap on which the appropriate amount of duty of excise has already been paid.

(ii) Semi-finished steel including blooms, billets, slabs, sheets bars, tin and hoe bars on which the appropriate amount of duty of excise has already been paid.

(iii) Old and used re-rollable scrap;

(iv) ingots, on which the appropriate amount of duty or excise has already been paid, cut or broken not rolled in any shape resembling the shape of any of the products referred to in sub-item (i) of this Item."

4. Another Notification No. 123/65 dated August, 1965 was issued, making further exemption in the following items :-

"Ingots on which the appropriate amount of duty of excise has already been paid cut or broken (but not rolled) in any shape resembling the shape of any of the product referred on in said item (i) of the item No. 26-AA."

5. Admittedly, the goods manufactured by the petitioner were excisable items but were exempted under these notifications.

6. The petitioner-Unit had paid a sum of Rs. 1,19,456.45 p from 12th of November, 1972, to 27th March, 1974 as excise duty. Subsequently, on 6-8-1995 an application u/s 11B of the Act was moved, claiming the refund of the said amount of Rs. 1,19,456.45 p which was collected by the Department. This refund application was rejected by the Assistant Collector on 8th April, 1976, on the ground that it was filed after the period of limitation, provided in Rule 11 of the Central Excise Rules, had expired. Against this order, the petitioner filed an appeal u/s 35 of the Act before the Collector (Appeals). It was allowed and the order of the Assistant Collector, rejecting the refund application, has been set aside and a direction was issued for fresh consideration.

7. After the remand order dated 21-8-1976, the Assistant Collector again considered the matter and rejected the refund application on 11-1-1977, on the point of limitation. The petitioner filed an appeal against the said order. It was allowed on 5-7-1977, holding that this was a case in which the provisions of Rule 11 of the Central Excise Rules would not be attracted. The provision of Indian Limitation Act was made applicable, holding that the application for refund was filed within three years from the date the mistake became known to the Unit.

8. Against that order, the Department went in revision before the Central Government u/s 36 of the Act. A notice was issued to the petitioner. A reply was filed by it. The Central Government allowed the revision on 29-4-1990 and set aside the order of the Collector (Appeals). It held that the refund of such excise levy can be claimed by a manufacturer only during the period of limitation prescribed under Rule 11 read with Rule 173-J of the Excise Rules, 1944.

9. The only issue to be considered in this case is whether the refund application would be barred by provisions of Rule 11 and Rule 173-J of the Rules or the Limitation will be covered under the Indian Limitation Act. Rule 11 as it was, runs as follows :-

"11. Claim for refund of duty. - Any person claiming refund of any duty paid by him may make an application, for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the date of payment of duty;

Provided that the limitation of six months shall not apply where any duty has been paid under protest."

10. This Rule was, however, brought with effect from 17-11-1980 by M.F.D.R. Notification No. 177/80-C.E., dated 12-11-1980. Rule 173-J of the 1944 Rules is quoted below :-

"173-J. Time-limit for recovery of short levy or refund of excess levy. The provisions of Rules 10 and 11 shall apply to the assessee."

11. Mr. B.P. Agarwal, learned counsel for the petitioner, relying on Article 23 of the Indian Limitation Act, contended that the application for refund could be filed within three years from the date of the recovery. His further contention was that since the Government of India had exempted the levy of excise on these products, the recovery/payment of the amount was not under any provision of the Act, so this court has powers under Article 226 of the Constitution of India to issue a writ for the refund of the same;

12. Mr. Suresh Pareek, learned ''Counsel appearing on behalf of the Department, strenuously argued that the claim of the petitioner has become barred by limitation in view of Rule 11 and Rule 173-J of the 1944 Rules. He referred to a judgment reported in Triveni Structurals Ltd. Vs. Collector, Central Excise, But, on a careful reading of this Division Bench authority, we are of the view that it supports the case of the petitioner for refund of the money, wherein it has been held that even if we were to hold that the claim for refund having been preferred after six months was liable to be rejected, on the point of limitation if the excise duty had been paid under a mistake, the claim for refund is entitled to succeed and it could not be rejected. We are in agreement with the view expressed in that case and hold that in this case the excise duty was recovered from the petitioner, though, in view of the Notifications issued earlier, the items manufactured by the Company were exempted. The bona fide of the petitioner cannot be doubted. On the other hand, it was wrong on the part of the Department to have issued notice or realised the octroi on those very goods. The refusal to grant refund would be not only harsh and inequitable, but extremely unjust and unfair.

13. The Supreme Court in the case reported in Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, while considering the question of refund of illegal recovery of market fee from the dealers by the market committee, held that in exercise of flexible power under Article 226 of the Constitution, it is always open to the court to pass such orders as public interest requires. Equity should always be kept in mind while dealing with such matters. It further held :-

"Where public bodies, under colour of public laws, recover people''s moneys, 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 preprogative writs, on the negative plea of ''alternative remedy'' since the root principle of law married to justice, is ubi jus ibi remedium."

14. Another case referred to is reported in Sakuru Vs. Tanaji, In that case only this much was held that Limitation Act, 1963 applies only to proceedings before the Court and not to proceedings before the quasi-judicial Tribunals or the Executive authorities. But that is not an authority for exercising the power under Article 226 of the Constitution as held by the Supreme Court in the case of M/s Shiv Shanker Dal Mills (supra).

15. Reference has also been made to a case reported in Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills Ltd., Jalandhar, In that case, it was held that :-

"When the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light."

We are also of the view that since he recovery was not in accordance with the provisions of the Act, Rule 11 or Rule 173J will not be applicable.

16. The last case referred to is reported in 1996 65 S.C.R. 155 (Pfizer Ltd. and Ors. v. Union of India). In this case, though, the refund application was rejected by the Bombay High Court but while considering the scope of Article 226 of the Constitution, it was held that it was always the discretion of the Court to pass suitable orders. Each case has to be decided on its own.

17. After giving our thoughtful consideration and relying upon the judgments of the Supreme Court in the cases of M/s. Shiv Shanker Dal Mills & Triveni Structural Limited (supra), exercising the power to under Article 226 of the Constitution, we direct the respondent to refund the entire amount of 1,19,456.45 p. along with 6% interest to be calculated from the date of the deposit till the date of the refund, within a period of one month from today.

18. The petition succeeds and is allowed with Rs. 2000/- as costs to be paid by the Department within the same period.

