(1990) 08 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3258 of 1987

Kanchan Steels — APPELLANT

Vs

Union of India (UOI) and Another — RESPONDENT

Date of Decision : 23-08-1990

Acts Referred:

Citation : (1991) 33 ECC 271

Hon'ble Judges : S.C. Agrawal, C.J;A.K. Mathur, J

Bench : Division Bench

Judgement

1. K.K. Lohiya is a partner of the firm M/s. Kanchan Steels. It owns a factory at B-22, Industrial Estate, Kota, wherein tit produces hot/cold rolled Patti/Patta etc. as commonly known in the trade parlance, made out of the duty paid flats cuttings 10 mm in thickness covered under sub-item (i)(a) of T.I. No. 26 AA. The petitioner submitted the classification to the Assistant Collector (non-petitioner No. 2). The classification was approved by the Assistant Collector to be effective from 21-12-1982 under Tariff Item No. 26AA(i)(a) of the Central Excise Tariff. The petitioner was required by the Central Excise Dept. to pay duty. The petitioner paid duty. The same being in excess than what was due from it, a refund was claimed for the sum of Rs. 18,683.05. The Department preferred an appeal before the Collector asserting that the classification submitted by the petitioner was wrong and it had been erroneously approved by the Assistant Collector. The appeal is still pending, but to the prayer for refund of Rs. 18, 683.05 no heed is being paid by the Central Excise Department. Consequently, the petitioner has approached this Court seeking mandamus directing the Central Excise Department to refund the aforesaid amount.

2. We have heard learned Counsel for the parties.

3. Since there is no stay order given in favour of the Central Excise Department by the Collector, the amount deposited by the petitioner was liable to be refunded. Realisation of excess duty was wrongful. Despite repeated demands made by the petitioner the amount has since not been returned it appears to us

that the Central Excise Department is liable to only to pay the aforesaid amount but also interest with effect from the date on which the amount was realised till payment. This would be subject to result of the appeal, which has already been filed.

4. The writ petition is disposed of.

