(2001) 11 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13659 of 2001

Kandhari Beverages Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11BB, 35F

Citation : (2002) 81 ECC 630 : (2002) 144 ELT 15

Hon'ble Judges : Jawahar Lal Gupta, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : O.P. Goyal and Gargi Kumar, for the Appellant; Rajesh Gumber, ACGSC, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The petitioner is engaged in the manufacture of aerated water. On May 9, 1995 the petitioner''s claim for Modvat credit of Rs. 1,10,66,702.46 was declined by the Commissioner, Central Excise. The petitioner filed an appeal before the Tribunal and prayed for waiver of deposit. The prayer was partly accepted. The petitioner was directed to deposit Rs. 80,00,000/- within three months from the date of the order. In pursuance to this order, the petitioner had made the deposit on February 7, 1996.

2. On August 17, 1999 the order dated May 9, 1995, passed by the Commissioner, was set aside. The case was remanded for a fresh decision. In pursuance to this order, the petitioner submitted an application dated October 27, 1999 for refund of the amount deposited by it in accordance with the provisions of law. Various representations followed. On June 6, 2001 respondent No. 4, viz. the Deputy Commissioner, Central Excise, informed the petitioner that the amount has been sanctioned as refund ''by way of credit in Cenvat''. No interest was, however, determined or credited. The petitioner pointed out that the order was not in conformity with law. It was entitled to the amount deposited and interest thereon. The petitioner even represented to the Tribunal. Having failed to get the refund, the petitioner has approached this Court with the prayer

that the respondents be directed to grant the refund of Rs. 80,00,000/- with interest at the rate of 15% per annum.

3. Short replies have been filed by respondent Nos. 3 and 4. The details regarding the inter-departmental communications with regard to refund of the amount have been given.

4. Learned Counsel for the parties have been heard.

5. Mr. O.P. Goyal, learned Counsel for the petitioner, has contended that the deposit of Rs. 80,00,000/- had been made on February 7, 1996 in pursuance to the demand raised vide order dated May 9, 1995 and the order passed by the Tribunal on November 14, 1995. The order passed by the Commissioner having been ultimately set aside, the petitioners are entitled to the refund along with interest from the date of deposit. It has been pointed out by the learned Counsel that in the petition on account of oversight, the claim for interest has been made with effect from November 2, 1999. In fact, the petitioner is entitled to the grant of interest from the date of actual deposit, viz. February 7,1996. Still further, it has been pointed out that on account of the illegal demands raised by the respondents, the petitioner had suffered heavy financial losses. As a result, it was constrained to close down the unit. Consequently, the petitioner is unable to avail of the amount credited to the Cenvat Account. On this basis, the Counsel prays that the respondents should be directed to either refund the amount in cash or to credit it to the Cenvat Account of another unit being run by the petitioner.

6. On behalf of the respondent Mr. Rajesh Gumber has contended that the petitioner is not entitled to the refund in cash and that the orders passed by the Authorities are legal and valid.

7. After hearing the learned Counsel for the parties, we are satisfied that the attitude adopted by the respondents is arbitrary, unfair and unjust. The demand was raised on May 9, 1995. A substantial amount of Rs. 80,00,000/- was deposited by the petitioner on February 7, 1996. The order of the Commissioner was set aside by the Tribunal on November 2, 1999. More than two years have elapsed, but the amount has not been refunded to the petitioner.

8. In the short replies filed on behalf of respondent Nos. 3 and 4 it has been pointed out that communication had been sent to the Board, seeking its permission to make the refund. However, it has not been stated as to under what provision of law, the Authority was required to seek the permission from the Board before making the refund of the amount to the petitioner. Still further, it appears from the replies that the Board had failed to respond despite different letters. Why ? There is no explanation. The end result is that the petitioner has continued to suffer for a long time. Its money has been illegally kept by the respondents without any justifiable reason. It appears that the effort was to keep the money on one pretext or the other. In the process, the petitioner had to shut down the unit. Resultantly, the unit, which was producing substantial quantity of

aerated water and yielding a significant amount of revenue to the State, is no longer in production. We cannot compliment the respondents on the manner in which they have conducted their affairs. It leaves a lot to desire.

9. As of today, the position is that the respondents have credited the amount to the petitioner''s Cenvat Account.

10. On behalf of the respondents it has been pointed out that after filing of the writ petition, the Commissioner has again decided the matter and a liability of over Rs. 1,00,00,000/- has been determined. Resultantly, it is pointed out that no useful purpose would be served by ordering refund of the amount.

11. Mr. Goyal submits that the petitioner has a right to file an appeal against the order. It is also entitled to pray for the waiver of pre-deposit. The levy being illegal, the amount deposited by the petitioner cannot be retained by the respondents.

12. After hearing the learned Counsel for the parties, we find that the petitioner was entitled to the refund. However, as at present, it appears more equitable to order that the amount of Rs. 80,00,000/- along with interest, determined in accordance with the provisions of Section 11BB of the Central Excise Act, 1944, shall be credited to the Cenvat Account of the petitioner''s unit at Baddi (Himachal Pradesh). The petitioner shall have the option to draw from that credit for meeting with its liability, if any, which may arise to make a deposit for the hearing of the appeal. The needful shall be done within one week from the date of the receipt of a copy of this order.

13. It is clarified that since the deposit had been made on February 7, 1996 and the order passed by the Commissioner on May 9, 1995 was set aside, the interest shall be calculated with effect from February 7, 1996 and not with effect from November 2, 1999.

14. It is further directed that in case of any change in the Cenvat Policy, the petitioner shall be entitled to claim the transfer of the amount to the account for payment of Excise Duty.

15. The petition is disposal of in the above terms.

16. The petitioner shall be entitled to the costs, which are quantified at Rs. 10,000/-.

