(1991) 07 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7368 of 1988

Kaushal Steel Rolling Mills APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 18-07-1991

Acts Referred:

Citation : (1992) 38 ECC 189 : (1991) ECR 584 : (1992) 57 ELT 48

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Harbhagwan Singh, for the Appellant; A. Mohanta, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner herein is engaged in the manufacture of various iron and steel products falling under Item 26AA(ia) of the Central Excise Tariff. It also manufactures bars which are below 3 mm in thickness. These bars were considered as flats. As a result, the petitioner was made to pay excise duty. This duty was paid under protest. According to the petitioner, he paid a total duty of Rs. 48,27,654.65 for the years 1978-79 to July 31,1988. According to a statement filed by the learned counsel for the petitioner, the total duty of Rs. 77,98,212.89 had been paid up to the year 1990-91. The petitioner claims that he persued the remedies under the Act. Its revision petition against the orders passed by the Appellate Collector, Central Excise, New Delhi in Appeal Nos. 182 to 262-CE/81 were referred to the Customs, Excise and Gold (Control), Appellate Tribunal, New Delhi (hereinafter referred to as the Tribunal). The Tribunal accepted the revision petition and allowed the claim of the petitioner. A copy of this order has been produced as Annexure P-45. In spite of the fact that this order was passed on July 14, 1986, the amount paid by the petitioner has not been refunded to it till now. The present writ petition has been filed for the issue of a mandamus for the refund of the amount due to the petitioner with interest at the rate of 15 per cent.

2. On behalf of the respondents, a short reply has been filed by Mr. Charanjit Singh, Assistant Collector, Central Excise Division, Patiala. In this reply, it has been, inter alia, averred that the Tribunal, while deciding the revision petition filed by the petitioner, had also decided the case of Messrs Rama Steel Rolling Mills, Mandi Gobindgarh. In the case of Messrs Rama Steel Rolling Mills, the department had filed an appeal and a stay application. The Hon''ble Supreme Court had admitted the appeal and stayed the operation of the order of the Tribunal on October 20,1987. It has been further averred that the department has also filed an appeal and stay application in the Supreme Court against the Order No. 431/86-B-l passed by the Tribunal in the case of the petitioner. Reference has also been made to the two orders passed by this Court in C.W.P. No. 9414 of 1988 and C.W.P. No. 7070 of 1988. It has also been averred that the respondents have the highest regard for the orders passed by any Court or Tribunal and they did not have any intention to disobey, disregard or otherwise not honour any order passed by the Tribunal.

3. Mr. Harbhagwan Singh, learned counsel for the petitioner has submitted that the reply was filed on behalf of the respondents in January, 1989. Thereafter, the matter has been conclusively decided by their Lordships of the Supreme Court in Collector of Central Excise and Others Vs. Calcutta Steel Industries and Others, . By this judgment, the Apex Court has accepted the view expressed by the Tribunal in another similar case. He has further pointed out that even though the department had filed a petition against the order of the Tribunal in the case of M/s. Rama Steel Rolling Mills, Mandi Gobindgarh, but no appeal had been filed against the order passed in favour of the petitioner. The petition against the Order No. 431/86-Bl passed by the Tribunal which is alleged to have been filed by the respondents, was not an appeal against the order at Annexure P-45. Furthermore, the counsel urges that the respondents on their own showing had not obtained any stay order against the refund of the amount due to the petitioner till today. On this premises, the learned counsel submits that there is no justification for the respondents in not refunding the amount due to the petitioner. The counsel claims that the respondents should be directed to refund the amount along with interest at the rate of 15 per cent.

4. On the other hand, Mr. A. Mohunta, appearing for the respondents has contended that the excise duty levied by the department should be presumed to have been recovered by the petitioner from the buyers and as such, this Court should not order the refund. He admits that in the written statement filed on behalf of the respondents, no such plea has been raised.

5. After hearing learned counsel for the parties, I find that the averment of the petitioner regarding the payment of excise duty under protest has not been rebutted. It is further clear that the petitioner''s averment regarding his approaching the authorities immediately through different proceedings has also not been controverted. In fact, there is no suggestion in the short reply filed on behalf of the respondents that the amount was at all leviable. On the contrary,

reference has been made to the orders passed in certain other cases. First of these cases is the one filed by the department against M/s. Rama Steel Rolling Mills. Their Lordships were pleased to pass the following order :-

"Upon hearing counsel the court made the following

ORDER

Appeal admitted. Pending appeal the operation of the Judgment under appeal is stayed in so far as it entitled the Respondent for refund of the amount of customs duty paid by them. However, if the appeal is dismissed, the respondent will be entitled to the refund of the entire amount paid by it alongwith interest at 12% per annum from the date of this order to the date of repayment. This will be without prejudice to the right of the respondent to claim interest, if any, under the statute."

This appeal was directed against the order dated March 7,1986 passed by the Tribunal. It was not an appeal against the order dated July 14,1986 passed by the Tribunal in the case of the petitioner. A copy of the order dated March 7, 1986 has been produced by the respondents as Annexure R-2. The present petitioner was not a party in this case and is not affected by the interim order passed by their Lordships of the Supreme Court. The other order mentioned by the respondents is the one passed by a Division Bench of this Court in C.W.P. No. 7070 of 1988. A copy of this order has been produced as Annexure R-3. This order reads as under :-

"Reply has been filed.

This petition is settled by a consensus.

The parties'' counsel are agreed that the petitioner has filed an appeal against the order of the Assistant Collector, Central Excise, Chandigarh, before the Collector of Central Excise (Appeals), New Delhi, respondent No. 3, and that before the latter an application for stay of recovery of excise duty has been made. The grouse of the petitioner is that without deciding the stay application coercive process has been set in motion to recover the demand from the petitioner without examining the merits of the stay application or even the merits of the appeal. In this situation, it is agreed to be ordered that till that application is decided, no recovery shall be effected from the petitioner and it is left to respondent No. 3 to decide the application as quickly as possible. We dispose of the writ petition in these terms.

Sd/-M.M. Punchhi Sd/-Ujagar Singh September 19,1988. Judges"

Even the above order is not helpful to respondents in any manner whatsoever. The matter has been conclusively settled by their Lordships of the Supreme Court in the case of M/s. Calcutta Steel Industries (supra), where the appeal against the order of the Tribunal filed by the Collector of Central Excise and others has been dismissed. Their Lordships were pleased to hold as under :-

"In the instant case the Customs, Excise and Gold (Control) Appellate Tribunal held that the flat product of thickness less than 3.0 mm and a width of less than 75 mm is classifiable as bars and not as hoops and thus it will be more appropriate to assess them under Section. 26AA(ia) than Section 26AA(ii). While determining the question the Tribunal had considered all the relevant facts. There was no misdirection on the facts. All proper and relevant materials relevant for the determination of the question before the Tribunal have been applied to. There was no misdirection in law nor any non-consideration of facts. There was no exclusion from consideration of legitimate proper materials. Thus the classification was proper."

6. A perusal of the record shows that the Tribunal had accepted the claim of the petitioner vide its order dated July 14, 1986. The revision petition filed by the petitioner had been allowed and his claim against the right of the department to recover excise duty on the ''bars'' manufactured by it, was upheld. It is thus clear that the department has recovered amounts of excise duty from the petitioner since the year 1978-79 without any authority of law. These recoveries were wholly illegal. The claim of the petitioner has been upheld by the highest authority constituted for the purpose. The action of the department in not giving the refund to the petitioner in spite of repeated requests was wholly unjustified. A perusal of the record indicates that the petitioner has gone from pillar to post and the departmental authorities have adopted all kinds of dilatory tactics to deny the petitioner what was due to it under the law. Specific mention may be made of the fact that the Assistant Collector passed a number of orders in August, 1986 observing that the "claim is not substantiated by any duty paying and other relevant/supporting documents like gate passes, PLA, RT-12 return, treasury challans etc. party has neither supplied the documents nor informed this office in regard to their difficulty in supplying these documents. Under the circumstances, I am constrained to hold that there is no basis for refund and accordingly their claim is rejected." Even though these orders were set aside in appeal and the claim of the petitioner had been accepted even by the Tribunal, yet no refund has been made to the petitioner. While it is the right of the authorities to levy and recover taxes, it is equally their obligation to ensure that the citizen and the industry are not unduly harassed. The present is clearly a case where the departmental authorities cannot be complimented for their conduct.

7. Mr. A. Mohunta urges that the claim for refund should be declined as the petitioner should be presumed to have passed on the burden to the consumers. The petitioner may or may not have passed on the burden of excise duty illegally recovered by the respondents. There is not even a suggestion to that effect in the written statement. In the circumstances of the case, it is not possible to permit the respondents to raise such a contention especially when the question involves determination of facts which have not been pleaded in the written statement.

8. In the circumstances, the writ petition is allowed. The respondents are directed to refund the excise duty paid by the petitioner in respect of the products which were grouped under Item 26AA(ia). This refund shall be made to the petitioner within a period of two months from the date of the receipt of a copy of this order. If this refund is not made within the above-said period, the petitioner shall be entitled to interest at the rate of 12 per cent on the entire amount from 1978-79 till the date of its actual payment. The interest shall be paid by the officer responsible for delaying the payment. The petitioner is also held entitled to its costs which are assessed at Rs. 5000/-. In the circumstances of the case, I am, however, not inclined to award the interest as claimed by the petitioner.

