

**(1987) 11 BOM CK 0028**

**In the Bombay High Court**

**Case No :** Appeal No. 469 of 1986 in Writ Petition No. 585 of 1981

Kay Foam Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

---

**Date of Decision :** 19-11-1987

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Customs Act, 1962 — Section 27(1)

**Citation :** (1988) 34 ELT 449

**Hon'ble Judges :** Pendse, J;Kotwal, J

**Bench :** Division Bench

**Advocate :** R.A. Shaikh, for the Appellant; J.P. Devdhar, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Pendse, J.—A short point falls for determination in this appeal preferred against the judgment dated January 21, 1986 by the original petitioner. The petitioner/appellant imported polythene-polyols, a chemical between July 1977 and August 1978. The Customs authorities levied duty upon the imported articles under Chapter 39 of the Customs Tariff, and the appellant accordingly paid duty. Subsequently, the appellant realised that the duty was payable under Chapter 38 of the Customs Tariff and therefore excess duty was recovered by the Customs authorities. Thereupon, on March 3, 1980 the appellant filed a refund application before the Assistant Collector of Customs seeking, refund of the amount of Rs. 2,94,226.65. On March 25, 1983 the appellant's refund application was rejected by the Assistant Collector on the ground that the refund sought was barred under provisions of Section 27(1) of the Customs Act. The appellant preferred an appeal, but the Appellate Collector upheld the order and the revision preferred by the Appellant before the Government of India ended in dismissal. The appellant thereupon filed petition under Article 226 of the Constitution of India in this Court.

2. The learned single Judge held that the conclusion of the Assistant Collector

that the application for refund was barred by provisions of Section 27(1) of the Customs Act was erroneous. It is now well settled that the duty recovered without any authority of law cannot be retained by the authority and the provision for filing application within period of six months from the payment of duty has no application to such a case. It is open for the tax payer to demand back duty which was recovered without authority of law at any stage, and the reference can be usefully made in this connection to the decision reported in *Sai Shipping Co. Pvt. Ltd. Vs. J. Datta, Member, C.B.E. and C. and others*, . The learned Judge set aside the orders passed by the Customs authorities and remitted the proceedings back to the Assistant Collector to determine what amount of excess duty was realised and then to refund the same to the appellant. The learned judge directed that the excess duty paid by the appellant subsequent to April 24, 1978 should be determined and refunded, and such determination should be done within a period of four months from the date of the judgment.

The appeal is preferred against, the direction of the learned Judge that the excess duty paid only subsequent to April 24, 1978 should be refunded. Shri Shaikh, submitted that the learned Judge should have directed refund of duty paid between July 1977 and August, 1978 and should not have restricted the period only subsequent to April 24, 1978. The submission is correct and deserves acceptance. The judgment of the learned single Judge does not indicate any reason as to why the refund is directed only in respect of duty paid subsequent to April 24, 1978. In our judgment, it is necessary for the respondents to determine the excess amount of duty paid between July 1977 and August 1978 and refund the same.

3. Accordingly, appeal is allowed and the judgment of the learned single Judge is modified and respondents are directed to ascertain the excess duty paid between July 1977 and August 1978. The respondents are further directed to complete the ascertainment and refund the amount to the appellants within a period of three months from to-day. In case the respondents fail to refund the amount within three months, then the respondents are further directed to refund the amount with interest at the rate of 18% per annum from the dates of payments till the date of refund.

4. In the circumstances of the case, there will be no order as to costs.