
(1990) 07 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 2174 of 1990

Kec International Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 11B(1), 11B(3), 2

Citation : (1991) 31 ECC 346 : (1991) 33 ECR 702 : (1991) 52 ELT 352

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : Mr. A. Hidayatullah and Mrs. Zia Mody, instructed by M/s. Gagret and Co, for the Appellant; Mr. S.M. Shah, for the Respondent

Judgement

Rule, returnable forthwith.

Shri Shah waives service on behalf of the respondents.

Heard counsel.

1. The petitioners carry on business of process of galvanising various structural steel pats supplied by their customers. It is the claim of the petitioners that the process of galvanising does not bring into existence any new product having any distinct name and therefore galvanising does not constitute manufacture u/s 2(f) of the Central Excises and Salt Act. Since March 1975 the petitioners were compelled to pay excise duty by the Department under the residuary Item 68 of the erstwhile first schedule to the Act. The petitioners entered into correspondence with the Departments but the Superintendent of Excise by order dated February 4, 1980 held that the duty was payable. The petitioners carried appeal before the Collector of Central Excise (Appeals) and the appeal was allowed by order dated August 13, 1981 and it was held that the process of galvanising does not amount to manufacture.

2. The petitioners thereupon requested the Superintendent to grant refund u/s 11B(3) of the Central Excise Act for the period from January 1978 and ending

with July 1981. The petitioners also forwarded the details of the amount of duty paid during the period. The amount of refund was not paid because the order of the Collector (Appeals) was carried in appeal before the Customs Excise & Gold (Control) Appellate Tribunal. The Tribunal also came to the conclusion in April 1988 that the process of galvanising does not amount to manufacture. The petitioners were therefore entitled to the refund of duty.

As the amount of refund was not paid by the Department, the petitioners preferred Writ Petition No. 1084 of 1990 in this Court and the petition was disposed by Justice Mrs. Manohar by order dated April 11, 1990. The learned Judge directed the Department to verify the claim of the petitioners for refund and grant the refund within three weeks. The learned Judge noted the claim of the petitioners that the verification has already been done.

3. In pursuance of the order passed by the learned Judge, the Assistant Collector of Central Excise by order dated April 30, 1990 verified the claim and held that out of the amount of Rs. 2,76,786.10 the amount refundable is only Rs. 1,71,626.20. As regards the balance amount of Rs. 1,05,159.90 the Assistant Collector held that the same is hit by limitation as prescribed u/s 11B of the Central Excises and Salt Act. The refusal to pay an amount of Rs. 1,05,159.90 has given rise to filing of the present petition.

4. Shri Hidayatullah, learned counsel appearing on behalf of the petitioners, submitted that the reading of Section 11B of the Central Excises and Salt Act by the Assistant Collector is clearly misconceived. The learned counsel urged that though sub-section (1) of Section 11B prescribed that the person claiming refund of duty shall make an application before expiry of the six months from the relevant date, the sub-section (3) provides that where as the result of any order passed in appeal or revision refund of duty becomes due, then the Assistant Collector shall refund the amount without having to make any claim in that behalf. Shri Hidayatullah is right in his submission that when provisions of sub-section (3) are attracted, then the Assistant Collector cannot refuse to make refund by resort to provisions of sub-section (3) are attracted, then the Assistant Collector cannot refuse to make refund by resort to provision of sub-section (1) of Section 11B of the Act. In the present case the petitioner are entitled to refund because of the order passed by the appellate case the petitioners are entitled to refund because of the order passed by the appellate authority and therefore, the Assistant Collector was clearly in error in declining to refund an amount of Rs. 1,05,159.90. The order of the Assistant Collector is therefore required to be set aside with a direction to refund the said amount forthwith.

5. Accordingly rule is made absolute and the respondents are directed to refund Rs. 1,05,159.90 to the petitioners within two weeks from to-day. In case the respondents fail to refund the amount within two weeks, then the amount shall be refunded with interest at the rate of 15% per annum, to be calculated from to-day till the date of payment.

6. The respondents shall pay the costs of the petitioners.