

(1991) 03 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 2522 of 1986

K.K. Dyeing and Another

APPELLANT

Vs

Union of India (UOI), CCE and Another

RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B

Citation : (1992) 38 ECR 521

Hon'ble Judges : S.P. Bharucha, J;A.V. Savant, J

Bench : Division Bench

Judgement

S.P. Bharucha, J.—The 1st petitioners carry on business as processors on job basis of man-made fabrics. They preferred refund applications for excise duty paid twice over under mistake of law. There were seven claims (which are particularised in Exhibit-A to the petition) aggregating to Rs. 43,744.14. The refund applications were made on the basis that goods upon which excise duty had already been paid had been returned for remaking, refining or redefining and that when these goods, as remade, left the factory excise duty was paid thereon once again. The refund applications having been made after the expiry of the period prescribed by Section 11B of the Central Excises and Salt Act, 1944, the petitioners also presented an application to the Central Board of Excise & Customs for relaxation of the period of limitation under the applicable rule, Rule 173L(4), of the Central Excise Rules. This application was refused on 17th December 1985 on the ground that the provisions of Section 11B were statutory and could not be relaxed. The Assistant Collector of Central Excise rejected the refund applications on the same ground, viz., that they had been made beyond the period of six months provided u/s 11B. Neither order referred to the merits of the refund applications.

2. This writ petition was filed to challenge the two aforementioned orders and to seek directions for refund of the amount of Rs. 43,744.14. In paragraph 3 of the petition, having stated the facts, the petitioners averred that the refund

applications fulfilled the requirements of Rule 173L and fell within the provisions thereof. The affidavit in reply filed on behalf of the respondents reiterated the position regarding limitation. It did not deal with the facts. It did not deny the specific averment that the refund applications fulfilled the requirements of Rule 173L and fell within the provisions thereof.

3. This Court has inherent jurisdiction to order the refund of amounts paid under a mistake of law within 3 years of the discovery of the mistake. This is not disputed by Mr. Devadhar, learned Counsel for the respondents. What he submitted was that the respondents should be permitted to check whether or not the refund applications fulfilled the requirements of Rule 173L and fell within the provisions thereof. This was an averment made in terms of paragraph 3 of the petition. The respondents did not so much as touch upon it in the affidavit in reply. It must be assumed, therefore, that they had checked the correctness of the averment and found no need to deal with it. All that we can now permit the respondents to do is to ascertain the correctness of the amounts to be refunded under the refund applications.

4. In the result, the petition is made absolute in terms of prayer (b)(iii), but it is made clear that the amount refundable shall be subject to verification and that the refund shall be without interest. The refund shall be made within eight weeks from today.