(2005) 08 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1192 of 2005

Lucid Colloids Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Central Excise Rules, 2002 — Rule 11AB, 8(3)
Central Excises and Salt Act, 1944 — Section 11AB
Constitution of India, 1950 — Article 19(1), 265
Parent Act — Section 11A(2B), 11AB, 11BC

Citation : (2006) 200 ELT 377

Hon'ble Judges : Rajesh Balia, J;Raghvendra S. Chauhan, J

Bench : Division Bench

Advocate : Dinesh Mehta, for the Appellant; Vinit Kumar Mathur, for the Respondent

Final Decision : Allowed

Judgement

1. Two principal prayers have been made in the writ petition relating to challenge the vires of Rule 8(3) of the Central Excise Rules, 2002 as under:

(i) The impugned provision and particularly phrase "Rs. 1000/- per day or whichever is higher of Rule 8(3) of Central Excise Rules, 2002 may be declared ultra vires Section 11AB of the Central Excise Act, 1944?

(ii) The offending phrase "Rs. 1,000/- per day or whichever is higher may be declared arbitrary, confiscatory and violative of Articles 19(1)(g) and 265 of the Constitution of India.

Consequential relief is for setting aside the demand founded on the aforesaid rule to the extent it levied interest @ Rs. 1,000/- per day.

2. The provision in the parent Act which authorises charge of interest on delayed payment of duty reads as under:

Section 11AB

Interest on delayed payment of duty : Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under Sub-section (2), or has paid the duty under Sub-section (2B) of Section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in Sub-section (2), or Sub-section (2B), of Section 11A till, the date of payment of such duty....

3. For giving effect to this provision, the Rule which has been framed by the Central Government is as under:

Rule 8(3)

If the assessee fails to pay the amount of duty by the due date, he shall be liable to pay the outstanding amount along with an interest at the rate of two per cent, per month or rupees one thousand per day, whichever is higher, for the period starting with the first day after due date till the date of actual payment of the outstanding amount:

Provided that the total amount of interest payable in terms of this sub-rule shall not exceed the amount of duty which has not been paid by date date:

Provided further that till such time the amount of duty outstanding and the interest payable thereon are not paid, it shall be deemed that the goods in question in respect of which the duty and interest are outstanding, have been cleared without payment of duty and the consequences and the penalties as provided in these rules shall follow.

4. The contention of the learned Counsel for the petitioner is that the parent Act does not authorize the Central Government to lay the procedure and method for levy of quantification of interest but merely authorises to notify the rate of interest per annum which is to be levied on delayed payment of Duty, or wrongful receipt of refund as the case may be, and therefore, to the extent it provides levy of collecting interest chargeable on delayed payment of duty by fixing Rs. 1,000/- per day to the minimum penalty if it does not exceed the amount chargeable as interest at the rate of 2% per month cannot be sustained. The rule in effect amounts to providing rate of interest chargeable on delayed payment of duty at 2% subject to minimum interest @ Rs. 1,000/- per day.

5. The learned Counsel for the revenue says that the levy of interest on delayed payment of duty has been in accordance with Rule 8(3), and therefore, has validly been charged. However, in term nothing has been submitted how the provisions made in the Rule 8(3) to the extent it provides basis of charge interest

is within the province of the Parent Act.

6. A perusal of Section 11AB clearly indicates that while delayed payment of duty or erroneous receipt of refund has been made subject to payment of interest from the first date of month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, till the date of payment of such duty or refund. However, instead of providing a fixed rate of interest per annum, it has been left to the discretion of the Central Government by notification to fix the rate at which interest is chargeable by providing limits within which such rate of interest per annum is to be fixed. The lower limit of the interest chargeable on delayed payment of duty/erroneous refund is 10% and upper limit of interest chargeable on such delayed payment is 36%. The Central Government is to provide a uniform rate of interest to be charged on delayed payments. It is not a matter of discretion of the authority concerned to provide a formula under which delayed payment is subjected to different rate of interests. In the case of delayed payment, the interest has to be charged at uniform rate as may be fixed by the Central Government within a span of 10% to 36%. It does not necessarily mean that in a given case, the interest may be, at X per cent and in another case, it is @ Y per cent. The direct effect of providing alternative ceiling of the interest makes it a fluctuating rate of interest to be charged on delayed payment of duty from assessee to assessee which would bring into existence highly unjust, arbitrary and discriminatory state of affairs that for the same default, different rate of interest is charged for delayed payment of duty/erroneous refund.

7. Moreover, prescribing the higher of the two ceilings that is 2% per month or Rs. 1,000/- per day does not take into account that charging of interest at the rate of of 1,000/- uniformly in all cases may exceed the ceiling of 36% per annum rate of interest which is the maximum limit of rate of interest which the Central Government can notify. The chargeable rate of interest on delayed payment by the assessee can only be one in all cases of delayed payment of duties and not separate, independent and individual assessee depending upon the difference in period for which Duty has been paid late or the amount of duty which has been paid after due date.

8. It may also be noticed that Section 11AB of the Parent Act does not authorize the Central Government to provide any formula of levy of interest from case to case, where on computation the interest rate does not go beyond the stated minimum and maximum limits. It has not been left to the discretion of Assessing Authority to charge interest in any given case between the two extreme limits. It has to be noticed that Section 11AB is not a provision authorising Assessing Officer to levy penalty for delayed payment at his discretion, but is founded on principle that where any tax payer has not paid the taxes when it has become due, he keeps the amount of public-exchequer for his own use and he becomes liable to compensate the State for such use of money for the duration of use.

9. The Legislature in its wisdom has instead of prescribing itself a fix rate, has

left it to the Central Government to fix the rate at which such interest is to be charged so that with charging rates of interest, every time Statute is not to be amended but within the limit prescribed, the Central Government may adjust the rate of interest chargeable on delayed payments, making it sure that delayed payment not become profitable on account of charge of interest at rate lower than market rate of interest.

10. The prescription of limit of rate of interest at 10% per annum and 36% per annum respectively also makes it clear that basic base of charge of interest is rate per annum arid not on any other basis. The provision made in Rules results in altering the nature of charge of interest from compensatory to penalty. By providing rate of interest @ 2% p.m. interest or 24% per annum, the charge of interest cannot be made payment of interest at monthly rates. Interest rate @ 2% per month can only be read as 24% per annum. Providing alternative levy of interest Rs. 1,000/- per day, if it is higher than the interest chargeable at the rate prescribed, is clearly by way of penalty and contrary to enabling power conferred on Rule Making Authority u/s 11AB of the Act.

11. Section 11AB clearly relates to charge of rate of interest related to amount in default for the period, the assessee remains in default of payment. Permitting charge of interest at the rate of Rs. 1,000/- per day is not computable in relation to amount of Duty in default. Whether Rs. 1,00,000/- is not paid in time or Rs. 1,000/- is not paid in time, the interest chargeable under the Rules remains Rs. 1,000/- per day. Such a device is not permitted by Parent Act.

12. Therefore, to the extent rule provides other than the rate of interest as an alternative mode of levy of interest per day not connected with the amount of duty in default is beyond enabling power of the Parent Act. The Rule 8(3) to the extent it provides after providing the rate of interest chargeable on delayed payment of duty, an alternative mode to provide higher ceiling limit is clearly in violation of Rule 11AB and cannot be sustained.

13. Since the alternative mode is severable from the other part of the provision without affecting its efficacy, it does not require that the entire rule is to be struck down.

14. We therefore, hold that Rule 8(3) to the extent it provides levy of interest at the rate of Rs. 1,000/- which is higher as alternative to charge of interest @ 2% on the amount of Duty means to be understood as 24% per annum on the amount of Duty in default is ultra vires to Section 11AB of the Act and cannot be sustained and is held inoperative.

15. Accordingly, the writ petition is allowed. The part of Rule 8(3) which includes expression "at the rate of two per cent, per month or rupees one thousand per day, whichever is higher" is held to be invalid. Consequently, interest chargeable on delayed payment had to be only at the rate of 2% per month or for that matter 24% per annum as notified by the State Government in terms of the Section 11BC, which is between the permissible limits in terms of Section 11AB.

Consequently, the demand notices are quashed and interest on delayed payment has to be recomputed only to the extent it is referred to the rate of interest (c)2% per month or 24% per annum under Rule 8(3).

There shall be no order as to costs.

