(1989) 09 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No. 301 of 1979

Man Industrial Corporation APPELLANT

Vs

Superintendent, Central Excise, MOR and Others RESPONDENT

Date of Decision : 12-09-1989

Acts Referred:
Central Excise Rules, 1944 — Rule 11

Citation : (1991) 34 ECR 572

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Man Industrial Corporation Ltd. (hereinafter referred to as ''the petitioner Company'') is engaged in manufacture of bars, rods, sections, squares, forgings, etc. and for that purpose it uses sled ingots produced with the aid of electric are furnace.

2. The petitioner Company was required to pay excise duty amounting to Rs. 3,60,787.13 P. on the products manufactured by it. The case of the petitioner is that the said products were exempt from the said duty and the petitioner Company was not liable for the same. The Allahabad High Court in Bansal Steelsons Co. Private Lid. v. Union of India and Ors. 1974 A.L.J. 350 : Cen-Cus June 1974, Page 1 has held that no difference could be made between ingots received from the large steel plants and ingots received from Mini Steel Plants and the exemption from excise duty granted under notification dated 30th November, 1963 read with notification dated 1st March, 1969 and 20th April, 1969 was applicable in respect of products manufactured from ingots received from both types of plants. On the basis of the said decision, the petitioner Company applied for refund of the duly which has been recovered from it. The Assistant Collector, Central Excise Division, Jaipur by his order (Ex. 7) dated 25th November, 1976 disallowed the said claim for refund in respect of the period 4th December, 1972 to 12th June, 1973 op. the ground that it was barred by

limitation under Rule 11 read with Rule 173J of the Central Excise Rules, 1944 (hereinafter referred to as ''the Rules''). Refund in respect of the period subsequent to 12th June 1973 was allowed by the Assistant Collector. On appeal the said order of the Assistant Collector was reversed by the Appellant Collector, Central Excise and Customs. New Delhi, by his order (Ex. 9) dated 5th May, 1977 and the Assistant Collector was directed to consider the refund claim of the petitioner Company under the general Limitation Law. The said order of the Appellant Collector was, however, set aside by the Central Government in exercise of its review power, by order dated 28th October, 1978 (Annexure 12) whereby the order of the Assistant Collector dated 25ih November, 1976 was restored. Hence, this writ petition.

3. Shri S.C. Agarwal, the learned Counsel for the petitioner company was invited my attention to the decision of Division Bench of this Court in M/s. Shiv Steel Works v. Union of India 1980 W.L.N. 287. The present case is fully covered by the aforesaid decision wherein it has been held that an act done by the excise authorities cannot be said to be an act done under the Act and Rule 11 read with Rule 174(J) of the Central Excise Rules would not be applicable and the Section 113 of the Limitation Act, 1963, which is the residuary article would be applicable. Under Article 113 of the Limitation Act the period of limitation is 3 years from the date when the mistake is discovered.

4. In the present case I find that the Allahabad High Court had decided the case of Bansal Steelsons Co. Private Ltd. v. Union of India and Ors. Cen-Cus June 1974, Page 1 on 18th January, 1974. The mistake can, therefore, be said to have been discovered on 18th January, 1974. The petitioner Company submitted the application for refund of the excise duty on 5th June, 1974 i.e. within the prescribed period of limitation of three years u/s 113 of the Limitation Act. The petitioner Company, is. therefore, entitled to succeed.

5. In this context reference may be made to the present decision of the Supreme Court in India Cements Ltd. Vs. Collector of Central Excise, wherein the Supreme Court has observed that the authorities ought to have extended the benefit of view taken by the Central Government in the case of Birla India Cement Works and other similar cases. Similarly it can be said that the respondents should have extended the benefit of the decisions of this Court in the matter of limitation for refund to all similar cases including the case of the petitioner Company.

6. Shri Agarwal has also submitted that the petitioner Company should be awarded interest on the amount refundable with effect from the date the petitioner submitted the application for refund i e. for 5lh June, 1974. In this regard he has invited my attention to the decision of this Court D.C.M. Limited Vs. Union of India (UOI) and Others, wherein interest at the rate of 12% per annum was awarded on the amount of excise duty found refundable. In the facts of the present case I am of the view that the petitioner Company should be entitled to payment of interest at the. rate of 12% per annum with effect from 7th April, 1979, the date of filing of this writ petition in this Court, the amount of

excise duty is refunded to the petitioner Company.

7. In the result the writ petition is allowed. The order (Annexure 12) dated 28th October, 1978 passed by the Central Government as well as the order (Annexure 7) dated 25th November, 1976 passed by the Assistant Collector, Central Excise, Jaipur in so far as it relates to rejection of the claim of the petitioner for refund of the excise duty in respect of the period 4th December, 1970 to 12th June, 1973 are set aside and the respondents are directed to refund the excise duty recovered from the petitioner on goods manufactured by it out of cut or broken, ingots manufactured by Mini Stool Plant on electric furnace and the petitioner Company, would also be paid interest @ 12% per annum on the amount that is found refundable, with effect from 6th April, 1979 till the amount is refunded. The respondents are directed to decide the claim of the petitioner Company for refund and make payment of the amount found refundable with interest within a period of three month. No order as to costs.