(1994) 10 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1810 of 1986

Mazda International (P) Ltd APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 11-10-1994

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 75

Citation : (1995) 57 ECR 205 : (1995) 77 ELT 526

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Mr. J.C. Patel, instructed by C.R. Patel and Co, for the Appellant; Mr. S.M. Shah, for the Respondent

Judgement

M.L. Pendse, J.—The Government of India in exercise of powers conferred by Section 75 of the Customs Act, 1962 and Section 37 of the Central Excises & Salt Act, 1944 published the Customs and Central Excise Duties Drawback Rules, 1971. On October 15, 1971 a public notice under Rule 3(1) was published by the Government of India setting out the rates at which drawback would be allowed on the export of the goods specified in the notice. In regard to the export of drugs, drug intermediates and pharmaceutical products the rate of drawback permissible was 12.5% of f.o.b. value.

2. The petitioners exported Gripe Water which is a drug or pharmaceutical product of the total f.o.b. value of Rs. 13,97,000 approximately. The total amount of the drawback to which the Petitioners were entitled was Rs. 1,78,932.06 and the Petitioners were paid that amount on December 9, 1983 and January 13, 1984.

The Government of India by public notice dated February 11, 1984 issued in exercise of powers under Rule 4 of the Drawback Rules removed Gripe Water from the entitlement of drawback benefit. The public notice was made retrospective with effect form June 1, 1983. In pursuance of the public notice on April 17, 1986 and May 15, 1986 show cause notices were served on the Petitioners to explain why the drawback amount paid in pursuance of public notice dated October 15, 1971 should not be withdrawn. The validity of the show cause notices is under challenge in this Petition filed under Article 226 of the Constitution.

3. Mr. Patel, learned Counsel appearing on behalf of the Petitioners, submitted that it is not open for the Central Government to withdraw the drawback benefits with retrospective effect. It was contended that the authority was exercising subordinate legislation and it is not permissible for such authority to provide that benefits stand withdrawn with retrospective effect. The submission is correct and deserves acceptance. It is not open for the authority issuing public notice to withdraw the benefit with retrospective effect and consequently the issuance of the show cause notice was without jurisdiction.

4. Accordingly, Petition succeeds and Rule is made absolute in terms of prayer (b). In the circumstances of the case, there will be no order as to costs.