(1988) 11 DEL CK 0008

In the Delhi High Court

Milkfood Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

Citation : (1989) 41 ELT 629

Hon'ble Judges : Rabindranath Pyne, J;Gian Chand Jain, J

Bench : Division Bench

Judgement

Rule D. B.

1. With the consent of Ld. Counsel for the parties we have heard the arguments and proceeding to decide the matter.

2. Petitioners in this petition seek declaration that the monies paid between 1st August, 1974 to 8th April, 1977 were paid under mistake of law and retention thereof by respondents not only violates Article 265 of the Constitution of India but is without Jurisdiction. Petitioners further seek appropriate writ for quashing the orders dared 18th August, 1981, 21st October, 1983 and 23rd September, 1987 passed by the respondent and a writ of mandamus directing the respondents to forthwith refund the money belonging to the petitioner No. 1 amounting to Rs. 37,65, 334-59 Ps. with interest.

3. It is not disputed before us that no duty was payable for the period 1st August, 1974 to 8th April, 1977. The authorities have rejected the claim of the petitioners only on the ground that it was barred by time u/s 11-B of the Central Excises and Salt Act, 1944.

4. Ld Counsel for the petitioners has brought to our notice various authorities of the Supreme Court holding that the word ''mistakes'' used in Section 72 of the Indian Contract Act means ''mistake of law as well as mistake of fact.'' Under the Judgments of the Supreme Court of the mistakes was recorded, the claim could be made within three years from the date of the discovery of the same.

5. Mr. Satpal Ld. Counsel appearing for the respondents, says that is is a disputed question of fact and can be decided only by the authorities.

6. Mr. Gulati, Ld. Counsel appearing for the Petitioners, has no objection if the matter is remanded to the authorities with a direction to decide the same in terms of the Supreme Court Judgments.

7. We accordingly quash the orders dated 18th August, 1981, 21st October, 1983 and 23rd September, 1987 (Annexures `G'' `H-3'' J) and remand the case to the Central Board of Excise and Customs for deciding the claim of the petitioners afresh. The claim would not be dismissed because of bar u/s 11B of the Central Excises and Salt Act, 1944 and be decided on merits keeping in view the various decisions of the Supreme Court regarding mistake of law and limitation etc.

8. The matter would be decided by the Board within six months from today.

9. The writ petition stands disposed of.

