(1991) 10 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Special Appeal No. 92 of 1990

Modern Steels APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 24-10-1991

Acts Referred:

Citation : (1991) 2 RLW 504 : (1992) 1 WLC 377 : (1991) WLN 369

Hon'ble Judges : R.S. Kejriwal, J;Mohini Kapoor, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mohini Kapur, J.—The appellant''s factory was manufacturing Het/Cold rolled Patti/ Patta of certain specifications and earlier it was clearing the produce under I.T. No. 26AA (iii) and was paying duty accordingly, Learnt that in other places the produce was being classified under I.T. No. 26AA(i)(a) and as such no excise duty was payable. The appellant filled a revised classification list on 4.6.1982 and this was accepted by the Assistant Collector on 19.1.1985. He thereafer filed an application for refund of excise recovered without authority from June 1982 to July 1983. A sum of Rs. 98,854.77 P. was claimed but only a sum of Rs. 89,157.80P. was paid on 31.7.1987. The balance amount of Rs. 9696.97, was retained. The appellant filed a writ petition claiming the amount with interest and also interest on the amount of Rs. 89,157.80 Paisa, which have been refunded. The learned Single Judge accepted the appellant''s contention as regards the amount of Rs. 9696.97 Paisa and the same was allowed alongwith interest but the interest on the remaining amount of Rs. 89,157.80 Paisa, was refused on the ground that it had been charged from the appellant on basis of the wrong classification made by the appellant himself and as he was in mistake, he was not entitled to get interest on this amount.

2. The learned Counsel for the appellant has pointed out that the correct classification had been made on 4th June, 1982, and the period for which the refund was claimed was from 4th June, 1982 to 31st July, 1983. These dates find

place in the writ petition and are also admitted by the respondent in the reply which has been filed to this special appeal. Earlier the appellant had been paying duty on basis of wrong classification but after 4th June, 1982, the classification had been corrected and the duty was paid under protest. The excess duty paid by him after making correct classification cannot be said to have been paid by him on account of his own mistake but it was paid only because his classification was pending consideration and subsequently it was accepted. It cannot be said that the amount of Rs. 89,157.80 Paisa was paid on basis of wrong classification made by the petitioner himself and to deny interest to him on this amount for this reason would not be justified. The learned Single Judge has disallowed interest on basis of wrong classification by the petitioner himself and this fact is not correct, hence the learned Single Judge has based his decision on incorrect facts which require to be corrected. We, therefore, modify the relief granted by the learned Single Judge and allow the appeallant interest at the rate of 12% p.a. on Rs. 89,157.80 Paisa, from the date it was paid from time to time, till the date this amount was refunded to the appeallant, interest on Rs. 9696.97 Paisa will also be paid at 12% p.a from the dates it was deposited till the date of refund.

3. Accordingly the appeal is allowed. The respondents are directed to refund the amount within a period of three months.

