
(1990) 10 KAR CK 0063
In the Karnataka High Court
Case No : Writ Petition No. 20672 of 1986

Mysore Paper Mills Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-10-1990

Acts Referred:

Central Excise Act, 1944 — Section 11 B

Citation : (1991) 32 ECC 129

Hon'ble Judges : S.R. Rajashekara Murthy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.R. Rajasekhara Murthy, J.—The petitioner is the Mysore Paper Mills Ltd., which who manufactures all varieties of writing and printing

paper as also newsprint in its factory. Among the several types of paper manufactured by the petitioner Company, printing writing paper is exigible

to levy under Central Excise Act under Item 17(3) of the Schedule at 60 Paise per Kgm. But the petitioner went on paying by mistake, at Rs. 1-20

Ps. per Kgm. under Item 17(2) of the Schedule. Items 17(2) and (3) are reproduced below for ready reference.

Item No.	Description of goods	Rate of duty
		per kgm.

2. Blotting, toilet, target tissue other than cigarette Rs. 1-20 per Kgm.

tissue, teleprinter, typewriting, manifold, bank bond, art paper chrome paper, tub-sized paper, cheque paper, stamp paper, cartridge paper, waxed paper, polythene coated paper, parchment and coated board (including art board, chrome board, and board for playing cards)

3. Printing and writing paper, packing and wrapping Rs. 0-60. Ps. per Kgm. paper, straw board, and pulp board, including grey board, corrugated board, duplex and triplex boards, other sorts.

It is stated by the petitioner that it went on paying the duty since the department insisted on payment of Rs. 1-20 Ps. per Kgm. during the period 1965 to 1976.

2. The Spl. Bench of the Customs, Excise and Gold (Control) Appellate Tribunal, in the case of Sirpur Paper Mills Ltd. v. Collector of Central

Excise, Hyderabad, reported in 1983(2) ETR 503 (October-Part 10 of the Report) held that writing and printing paper, irrespective of the

grammage, was required to be classified under tariff Item 17(3). It held that the department was in error in classifying writing and printing paper as

other kinds of paper"" falling under Item 4. This decision was rendered on 1st July 1983. After coming to know of the said decision, the petitioner

realising the mistake in paying excess of duty than what was legitimately due to the Govt., made a claim for refund of the excess amounts paid by it

during 1965 to 1976. This application for refund was made on 30-3-1984 claiming refund of a sum of Rs. 10,63,071-63 Ps.

3. The Asst. Collector of Central Excise, Davangere the second respondent made an order on 26-11-1985 as per Annexure-A rejecting the claim

as barred by time u/s 11B of the Central Excise and Salt Act. This order is challenged by the petitioner in this writ petition.

4. The contention of the petitioner is that the excess duty paid was under mistake of law and therefore it is entitled for refund of the same. The

petitioner has relied upon a few decisions of the Supreme Court in the case of Commissioner of Sales Tax v. Auriaya Chamber of Commerce

reported in 1985 (25) ELT 867 (sic) and in the case of State of Kerala v. Aluminium, Industries Ltd., (16 STC689).

5. The claim of the petitioner is resisted by the respondents and statement of objections is filed on their behalf. Both the Union of India and the

Asst. Collector have relied upon the provisions of Section 11B and sought to justify the order of rejection.

6. It is no longer open to the Central Govt. to resist the claim for refund of duty paid under mistake of law in view of catena of decisions rendered

by the Supreme Court and followed by this Court in the Case of Asstt. Collector of Asstt. C.C. Ex. Vs. Kashyap Engineering and Metallurgicals

(P) Ltd., and Mafatlal Plywood Industries Ltd. v. Asstt. Collector of Central Excise and Ors. (W.A.No. 2706/85) since reported in [1991] 32

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7. That the printing and writing paper manufactured by the petitioner was exigible to levy at 60 paise per Kgm. under Item 17(3) for the relevant

period is not disputed. That the petitioner went on paying on the said goods, at Rs. 1-20 Ps. per Kgm. under mistake that the said goods are

covered by Item 17(2) is also not in dispute. The Spl. Bench of Central Excise and Gold (Control) Appellate Tribunal in Sirpur Paper Mill's case,

for the first time, held that the printing and writing paper should suffer duty under Item 17(3) only. It is not case of the department that this order of

the Spl. Bench has been taken up in appeal and nothing is stated about it in the statement of objections. The order of the Central Excise and Gold

(Control)"" Appellate Tribunal was delivered in the year 1983 and the petitioner has relied upon the said order for making claim for refund.

8. On the facts of the present case the petitioner discovered the mistake immediately after the order of the Special Bench of the Central Excise

Gold (Control) Appellate Tribunal was delivered on first of July 1983 reported in 1983(2) ETR 503. The application for refund was made on 30-

4-1984. Even applying the observation of the Supreme Court in the case of Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI)

and Others, the application for refund was within the period of three years from the date of discovery of the mistake. Therefore, it has to be held

that the application was made within the reasonable time and there was no inordinate delay in filing the application for refund.

9. It is only cases of erroneous payment made by an assessee that is governed by the limitation prescribed u/s 11(1)(b) (sic) of the Act and not an

erroneous assessment. Such payments made under mistake as held by the Supreme Court in the case of Patel India (Pvt.) Ltd. v. Union of India

and Ors. 1983 ELT 1445 (sic) may be by inadvertence, error or misconstruction.

10. In the case of D. Cawasji and Co. and Others Vs. State of Mysore and Another, the Supreme Court observed that any claim for refund

should be made within three years from the date of knowledge. This Court has also taken a consistent view in the cases of ITC and Mafatlal and

granted refund of excess duty paid under mistake irrespective of the period such excess payment was made. In Kashyap Engineering case the

claim was for five years and in the case of ITC the claim was from 1970 to 1973. It the latest decision of the Supreme Court in the case of HMM

Ltd. and another Vs. The Administrator, Bangalore City Corporation, Bangalore and another, the Supreme Court ordered refund of the octroi

duty collected by the Bangalore City Corporation for the period 1974-75 to December 1977 on the ground that the said levy of octroi was

without authority of law. In Vallabh Glass Work's case the Supreme Court has held that even the normal period of three years has to be reckoned

on the facts of a given case and should not be applied in a rigid manner. The Supreme Court observed that the facts and circumstances of each

case has to be considered even though the claim is made beyond the period of three years.

11. In view of the law laid down by the Supreme Court it is well-settled that department can no longer resist the claim for refund of the petitioner

which was undisputedly made under mistake. The Central Govt. cannot retain the excess duty collected which is not authorised under law and

resist the claim for refund.

12. In the result the writ petition is allowed and I direct issue of mandamus to the Union of India to consider the claim for refund made by the

petitioner on 30-4-1984 claiming of Rs. 10,63,071-63 P. within a period of eight weeks from the date of receipt of this order. The petitioner is

entitled to cost of Rs. 500/- of the writ petition.