

(1991) 08 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 2550 of 1991

New Vinod Silk Mills Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-08-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11B

Citation : (1991) ECR 18 : (1992) 58 ELT 4

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri P.D. Shah, instructed by M/s. Manilal Kher Ambalal and Co, for the Appellant; Shri V.G. Rege and Shri A.S. Khan, for the Respondent

Judgement

Pendse, J.

Rule, returnable forthwith.

Shri Rege waives service on behalf of the respondents.

Heard counsel.

1. By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging legality of order dated July 2, 1991 passed by the Assistant Collector of Central Excise, Division "H", Bombay. By the impugned order the Assistant Collector rejected refund claim of Rs. 2,36,003.91 u/s 11B of the Central Excises and Salt Act, and confirmed the demand of Rs. 77,187/- against the petitioner u/s 11A of the Central Excise Act.

2. The petitioners had filed refund claim for the period commencing from April 9, 1986 to April 23, 1986 on September 11, 1986. The petitioners claimed that CEGAT had already decided that the recovery of duty by the Department was without any authority of law. The petitioners claimed refund of duty and this claim has been rejected by the Assistant Collector only on the ground that as the petitioners had recovered duty from their customers, grant of refund would

amount to unjust enrichment and in view of the decision in Roplas case reported in Ashoka Industries Vs. Union of India (UOI), 7 the petitioners are not entitled to refund.

The Assistant Collector also served show cause notice dated June 17, 1981 on the petitioners to show cause why amount of Rs. 77,187/- which was refunded to the petitioners on January 23, 1990 should not be recovered back on the ground that the refund was made in violation of the principles of unjust enrichment.

3. The petitioners appeared before the Assistant Collector and pointed out that the recovery of duty by the Department was in violation of law. The petitioners relied upon the decision of the CEGAT to establish that the recovery of duty was wrong and obviously that contention could not have been turned down. Indeed in pursuance of the judgment delivered by CEGAT, the Department had refunded amount of Rs. 77,187/-. The Assistant Collector with a view to deprive the petitioners of their rightful claim of refund, found out a novel method to deny the relief by resort to principles of unjust enrichment. The course adopted by the Assistant Collector was clearly erroneous. It has been repeatedly held by this Court that when a refund is sought in pursuance of the order passed by the appellate authority, it is not permissible to deny the claim by resort to the doctrine of unjust enrichment. In spite of citations of judgments of this Court before the Assistant Collector, the impugned order proceeds to deny the claim solely on the ground that the petitioners are not entitled to refund as they have recovered back amount of tax from the customers. In our judgment, the order of the Assistant Collector suffers from serious infirmity and cannot be sustained. It is wrong on the part of the Assistant Collector to rely upon the decision of Roplas case when the said decision is no longer a good law. We hope and trust that the Assistant Collector would hereafter not refuse the claim of refund by reference to the decision in Roplas case. The action of the Assistant Collector in seeking to recover back the amount of refund already paid to the petitioners is equally unsustainable and the petitioners are entitled to the relief.

4. Accordingly, the order dated July 2, 1991 passed by the Assistant Collector, and copy of which is annexed as Exhibit "L" to the petition, is set aside and the Assistant Collector directed to grant refund to the petitioners on verification, within two weeks from to-day. In case the amount is not refunded within two weeks, then the petitioners are entitled to interest on the said amount at the rate of 15% per annum from to-day till the date of payment. The show cause notice making demand of Rs. 77,187/- is struck down. The respondents shall pay the costs of the petitioner.