
(1991) 05 CAL CK 0033

In the Calcutta High Court

Case No : Appeal No. 619 of 1989 and Matter No. 402 of 1988

Orissa State Electricity Board

APPELLANT

Vs

Collector of Cus. (Appeals)

RESPONDENT

Date of Decision : 28-05-1991

Acts Referred:

Customs Act, 1962 — Section 27
Limitation Act, 1963 — Article 113

Citation : (1992) 60 ELT 209

Hon'ble Judges : Umesh Chandra Banerjee, J; Sunil Kumar Guin, J

Bench : Division Bench

Judgement

Umesh Chandra Banerjee, J.—This appeal is directed against the order of a learned Single Judge dismissing the writ petition filed by the writ petitioner wherein the petitioner Orissa State Electricity Board prayed for issuance of a writ of mandamus commanding the respondents to cancel and/or rescind the orders passed by the Collector of Customs (Appeals) and the Assistant Collector of Customs and to refrain from giving effect or taking any steps in terms thereof or thereunder and to Refund to the writ petitioner a sum of Rs. 9,54,983.42 P.

2. The principal contention of Mr. Mitter appearing in support of the appellant, is that the question of the refund application being barred u/s 27 of the Customs Act, 1962 does not and cannot arise.

3. In order to appreciate the contentions raised, a brief reference to the facts ought to be noted at this juncture. It appears that the shipment of the imported goods was effected on 28th June, 1985 by the Orissa State Electricity Board and on April 17, 1986 the necessary Bill of Entry was filed for clearance of the goods. On the self-same date, viz. April 17, 1986 the Customs Authorities assessed the duty to be paid by the Orissa State Electricity Board to the extent of Rs. 22,73,742.83 P. As per the order of assessment passed by the authority concerned, the State Electricity Board duly paid the same. Subsequently, however, on 31st October, 1986 the appellant State Electricity Board was served

with a letter dated 15th October, 1986 from the Assistant Collector of Customs intimating therein that the goods have been wrongly assessed resulting in excess levy of duty. The Assistant Collector by the above-noted letter has categorically stated : "You are so requested to scrutinizes the same and claim for refund if any with A.R.S. if you so desire". There is no dispute that the letter was received by the appellant on 31st October, 1986. Shortly thereafter on November 28, 1986 an application for refund for a sum of Rs. 9,54,983.41 P. has been filed before the Customs Authorities. On 3rd December, 1986 the Assistant Collector of Customs, however rejected the claim for refund and thereafter an appeal was filed on 23rd December, 1986 before the Collector of Customs (Appeals) in terms of the provisions of the statute. On 20th February, 1987, as appears from the records in the matter under consideration, the Collector of Customs (Appeals) rejected the appeal on the question of limitation u/s 27 of the Customs Act and by reason of the aforesaid rejection, a writ petition was filed before this Court and the learned Single Judge dealing with the matter passed the order which is under challenge in this appeal.

4. On a proper analysis of the factual aspect of the matter, it appears therefore that even though the duty had been paid in terms of the order of assessment on 17th April, 1986, on 31st October, 1986 the State Electricity Board was informed about the excess levy and was further directed to lodge its claim for refund as noted above fully. There is no element of delay in the matter of making an application for refund from the date of such information before the appropriate authority, but the issue arises whether Section 27 of the Customs Act would be a bar in presenting a claim for refund. Apart from the fact that the Governmental agency ought not to take the plea of limitation as a plea to defeat a legitimate claim of a tax-payer, on the factual score it appears that the knowledge of the tax-payer is derived only on 31st October, 1986 when the intimation was given of the excess levy. The Assistant Collector himself has stated that there was an excess levy and the refund may be claimed and in terms thereof, an application for refund has been made. It is not that the petitioner himself was aware of such an excess levy and thereafter acted like an indolent and moved the application long after the expiry of the six month period as prescribed under the statute. It is the concerned Officer of the Department who has informed the petitioner about the excess levy. It is incidentally to be noted that the amount has been paid as per the assessment effected by the concerned authorities and not as per self-assessment. Whether the assessing authority has made a wrong or an irregular assessment - that can only be intimated by the concerned Department and the petitioner has no way to know the same. The Department themselves say that on "further scrutiny" it came to light that there was an excess payment. Therefore, it will be presumed that the excess levy came to light only in or about October, 1986 and within a month thereafter the application for refund has been made. It is to be further noted that the time-limit as prescribed u/s 27 of the Customs Act is six months from the date of payment. Admittedly, the payment has been effected on April 17, 1986 and the six month period would expire in

October, 1986 and it is only on 31st October, 1986 that such a knowledge is said to have been acquired by the writ petitioner through the intimation dated 15th October, 1986. In our view, the date of knowledge ought to be a material factor in the matter of computation of the period of limitation in the present set of facts and circumstances. Mr. Mitter placed reliance on the latest pronouncement of the Supreme Court and submitted that it would otherwise be an unjust enrichment and as a matter of fact, Article 113 of the Limitation Act ought to be made applicable in the facts and circumstances of the matter under consideration instead of Section 27 of the Customs Act, 1962.

5. In the view we have taken as above, we need not deal with the decision cited from the Bar in regard to the issue of unjust enrichment by reason of payment of the duty under a mistaken notion.

6. Mr. Lahiri, appearing for the Customs Authorities, however, strenuously contended that there is as a matter of fact, apart from the issue of limitation, some dispute as to the quantum of the refund and in that perspective, in our view, interest of justice would be sub served if the refund application be heard on merits by the appropriate authority without taking recourse to the plea of limitation as envisaged u/s 27 of the Customs Act,

7. We have been informed by Mr. Mitter that the Appellate Court on an earlier occasion when the application for stay was moved, directed refund of the entire amount upon the appellant furnishing Bank Guarantee in favour of the Customs Authorities and such Bank Guarantee has been kept renewed from time to time in favour of the Customs Authorities and is still in force.

8. In the premises, the order of the learned Trial Judge is set aside. The impugned order of the Assistant Collector of Customs dated 3rd December, 1986 and the order of the Collector of Customs (Appeals) dated 20th February, 1987 are also set aside and quashed. Let the application of the writ petitioner for refund be heard by the appropriate authority on merits without going into the question of limitation. Since the matter is pending for a fairly long period of time, the Departmental authorities are directed to hear the application for refund with utmost expedition and preferably within a period of eight weeks from the date of communication of this order upon affording an opportunity of hearing to the writ petitioner. The Bank Guarantee furnished by the appellant shall continue to be in force and shall abide by the result of the refund application.

9. The appeal is disposed o f accordingly. There will be no order as to costs.

Certified copy of this judgment be made available to the parties with utmost expedition upon an application to that effect being made by the parties.

All parties are to act on a signed copy of the operative portion of this judgment.