(1991) 08 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 909 of 1984

Parle Beverages Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 02-08-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 173J
Central Excises and Salt Act, 1944 — Section 11B

Citation : (1991) 38 ECR 139 : (1991) 56 ELT 60

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

Bench : Division Bench

Advocate : Shri A. Hidayatullah and Mr. Rohan Shah, instructed by M/s. Gagrat and Co, for the Appellant; Shri V.G. Rege and Shri A.S. Khan, for the Respondent

Judgement

Pendse, J.—By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging legality of order dated January 26, 1984 passed by the Assistant Collector of Central Excise, Division K-II, Bombay. By the impugned order the Assistant Collector rejected five refund claims filed by the petitioner Company on the ground that all the claims are time-barred u/s 11B of the Central Excise Act read with Rule 173J of the Central Excise Rules as it stood prior to August 6, 1977. The facts giving rise to passing of this order are not in dispute and are required to be briefly stated to appreciate the grievance of the petitioners.

2. Prior to March 17, 1972 the petitioner Company manufactured aerated waters and the process of manufacture was liable to levy of excise duty under Item 1-D of the erstwhile First Schedule to the Central Excises and Salt Act and the rate of duty was 20% ad valorem. The Company claims that aerated waters were manufactured out of synthetic essences. On March 17, 1973 the Government of India issued an exemption Notification No. 30/72 and the notification exempted all types of aerated waters from payment of so much of the duty as was in excess of 10% ad valorem. The exemption notification excluded aerated waters

in the manufacture of which blended flavouring concentrates in any form was used. In spite to the exemption notification the Company under mistake of law paid the duty at the rate of 20% ad valorem between the period March 17, 1972 to October 11, 1976.

This Court by judgment delivered on October 11, 1976 in Miscellaneous Petition No. 944 of 1973 interpreted the scope of the expression "blended flavouring concentrates in any form" and held that synthetic essences were not commercially understood as blended flavouring concentrates in any form. As a result of the decision of this Court, the aerated waters manufactured by the use of synthetic essences were held to be entitled to the exemption under Notification No. 30/72.

3. On March 2, 1977 the Company filed fresh classification list claiming benefit of exemption notification in respect of manufacture of aerated waters branded as Gold Spot. Another classification list was filed on August 22, 1977 claiming benefit of exemption notification in respect of aerated waters sold under the brand names of Rim Zim and Limca. The classification lists were approved by Superintendent of Central Excise on September 22, 1977.

On March 22, 1979 the Company filed five refund claims for the sum of Rs. 68,07,206.26 for the period from March 17, 1972 and ending with October 17, 1976. The Company claimed that excess duty was paid without claiming advantage of exemption notification under mistake of law and therefore the Department is liable to refund the said excess duty. The Assistant Collector on October 16, 1980 passed ex parte order rejecting the refund claims as barred under Rule 11 read with Rule 173J of Central Excise Rules. The appeal filed by the Company before the Collector (Appeals) was allowed and the matter was remanded for fresh decision. On remand the Assistant Collector rejected the refund claims as time-barred by the impugned order dated January 28, 1984. The Assistant Collector held that the departmental authorities are bound by provisions of Section 11B and the Rules framed under the Central Excise Rules and cannot award refund for period beyond six months. The decision of the Assistant Collector is under challenge.

4. Shri Hidayatullah, learned Counsel appearing on behalf of the petitioners, submitted that the impugned order passed by the Assistant Collector is clearly erroneous and the petitioners are entitled to the refund of excise duty paid under mistake of law. The submission is correct and deserves acceptance. By catena of decisions of this Court it is settled that the Department cannot retain the excess duty recovered without any authority of law. It is well-settled that for realisation of excess duty paid under mistake of law the period of limitation set out u/s 11B is not attracted while granting relief in writ jurisdiction. In view of several decisions of this Court the relief sought by the petitioners cannot be resisted.

5. Accordingly, petition succeeds and the impugned order passed by the Assistant Collector on January 28, 1984 is set aside and the respondents are

directed to grant the amount of refund as claimed by five refund applications, after verification within a period of four weeks from to-day. In case the amount is not paid within the stipulated period, then the Department is required to refund the amount with interest at the rate of 15% per annum from to-day till the date of refund.

6. There will be no order as to costs.

