(1987) 06 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 1878 of 1981

Patel Aluminium Private Limited and another — APPELLANT

Vs

M.C. Thakur, Assistant Collector of Central Excise, Andheri and another — RESPONDENT

Date of Decision : 24-06-1987

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11B

Citation : (1988) 16 ECR 591 : (1988) 36 ELT 39

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Judgement

1. To tax and to please is not known to the Central Excise Department, despite clear judgments and guidelines from the Courts. This is one such case.

2. The petitioners were paying excise duty on aluminium dross and skimmings which were not even waste products. It appears, that by a judgment given by this High Court by Mr. Justice Lentin, in the matter of Indian Aluminium Co. Ltd. and another v. A. K. Bandyopadhyay and others, reported in 1980 E.L.T. 146 (Bom.) it was clearly held that dross the skimmings are not goods and no excise duty can be levied on it. As soon as the petitioners came to know of this judgment, by a letter dated January 16, 1980 addressed to the Assistant Collector of Central Excise, the petitioners requested the department to clarify the matter and also to refund the excise duty which the petitioners had paid on the same. There was no reply to this letter. A reminder was sent on February 14, 1981, and also in that letter the petitioners sought personal hearing in the matter as usual. Again there was no response to the reminder.

3. The petitioners thereafter filed their classification list and in that they classified this item of aluminium dross and skimmings and expressly stated in the column under "remarks" that they were not liable to any excise duty and they referred to the decision of the Central Board of Excise and Customs. This classification was accepted by the department. Yet, they would not refund the

excise duty paid by the petitioners. However, by a letter dated March 28, 1981 the Assistant Collector informed the petitioners that the petitioners may file their refund claim in the prescribed form and that it would be considered on merits. The petitioners complied with the same and requested the department to refund the amount. I may mention that the amount involved is a small sum of Rs. 12,386.79/-. Yet, strangely, the Assistant Collector rejected the refund claim on the basis that the item would come under residuary item No. 68 and, therefrom, the claim was rejected. Needless to say that this order was per se wrong and there is no justification whatsoever for rejecting the claim of the petitioners.

4. In the meanwhile the petitioners had no choice but to file this petition. In fact I find no answer to this petition. In the result, the petitioners must succeed. I, therefore, pass the following order :

5. Rule is made absolute in terms of prayers (a) and (b). I direct the respondents to pay the amount within a period of eight weeks from today. However, the interest shall be payable from January 1, 1980.

6. The petitioners would also get the costs of this petition.