(1990) 11 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No. 805 of 1983

Prathiba Engineering Industries APPELLANT

Vs

Assistant Collector of C. Ex. RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B

Citation : (1991) 52 ELT 381

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Advocate : Shri V. Narayanaswami, for the Appellant; Shri K. Jayachandran, Addl. Central Govt. Stg. Counsel, for the Respondent

Judgement

S. Ramalingam, J.

1. The petitioner paid Central Excise Duty for 1975-76, 1976-77 and 1979-80. On the advice of their auditors they filed an application before the

Assistant Collector of Central Excise, Madras-18 for refund of a sum of Rs. 11,181-24 p. stating that the above sum reflects the excise duty which

had been erroneously paid by them on post-manufacturing expenses. The petitioner was served with a show cause notice as to why their claim

should not be rejected as time-barred u/s 11B of the Central Excises and Salt Act, 1944. The petitioner set an explanation and the same was

rejected. Thereafter, the respondent, by the impugned order dated 16-11-1982, rejected the claim on the ground that the refund claim had been

preferred beyond the time prescribed u/s 11B of the Central Excises and Salt Act. The prayer in the writ petition is for the issue of a certiorarified

mandamus to quash the said order dated 16-11-1982 and to direct the respondent to pass orders granting refund of the excise duty collected from them, what they would call as post-manufacturing expenses.

2. The Assistant Collector of Central Excise is a statutory functionary. He is bound by the provisions of the Central Excises and Salt Act, including

Section 11B. If an application for refund claim is barred by limitation u/s 11B, he is entitled to reject the same. That is what the respondent has

exactly done in this case. If the petitioner were of the opinion that there was no liability to pay central excise on certain portions of manufacturing

expenses, described by them as post-manufacturing expenses, it is for them to establish their case by instituting proper civil proceedings for refund

of the amount. Unless the question of liability or otherwise of the petitioner for payment of excise duty on that portion of the cost referable to post-

manufacturing expenses is adjudicated, the claim for refund cannot be ordered. That would depend upon the result of the disputed question of fact.

The proper remedy for the petitioner is to file a regular suit. Reserving that liberty to the petitioner, this writ petition is dismissed. No costs.