

(1985) 08 RAJ CK 0042
In the Rajasthan High Court
Case No : Civil Writ Petition No. 88 of 1979

Prem Cables Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 173J
Central Excises and Salt Act, 1944 — Section 36
Constitution of India, 1950 — Article 226

Citation : (1986) 9 ECC 290 : (1986) 26 ELT 886

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Advocate : L.R. Mehta and Rajendra Mehta, for the Appellant; R.P. Joshi, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—This is a petition under Article 226 of the Constitution of India praying, inter alia, for the following reliefs :

(i) that order no. 20661 (annexure 4) dated August 8, 1973 of the Assistant Collector, Central Excise, Jodhpur; the order (annexure 5) dated October 29, 1975 of the Appellate Collector, Central Excise, New Delhi; and the order (annexure 6) dated April 6, 1978 of the Government of India, may be quashed insofar as the petitioner's claim for refund for the period commencing from June 1, 1970 to March 31, 1971, has been rejected;

(ii) that it may be declared that the realisation of the excise duty of Rs. 50,900.78, from the petitioner for the period June 1, 1970 to March 31, 1971, on A.A.C. and A.C.S.R. conductors manufactured by the petitioner was illegal and that Rule 11 read with Rule 173J of the Central Excise Rules, 1944 (for short "the Rules" herein) was not applicable to the petitioner's case for refund;

(iii) that the amount of Rs. 50,900.78 realised from the petitioner for the period

from June 1, 1970 to March 31, 1971, irrespective of the provisions of Rule 11 read with Rule 173J of the Rules, may be ordered to be refunded with interest at the rate of 1% p.m.

2. It is not necessary to state the facts in detail, for, the learned counsel for the parties submit that this writ petition is squarely covered by R.J. Engineering and Iron Re-Rolling Mills Vs. Union of India (UOI) and Others, It may be stated here that while admitting this writ petition on January 23, 1979, this writ petition was ordered to be connected with S.B. Civil writ petition no. 277/77: R.J. Engineering and Iron Re-Rolling Mills Vs. Union of India (UOI) and Others, The petitioner submitted a revised classification list on April 15, 1972 to the Superintendent, Central Excise, Pali claiming assessment of A.A.C. and A.C.R.S. conductors at 4%. The Assistant Collector, Customs and Central Excise, Jodhpur rejected it by order annexure 1 dated August 8, 1972. The appeal was decided by order Annexure 2 dated October 25, 1975. The revision was accepted by the Central Government by order annexure 3 dated April 1, 1978 holding that petitioner's products (A.A.C. and A.C.S.R. conductors) were not liable to be charged with excise duty at the rate of 5%. By virtue of notification no. 125/70, which became effective from June 1, 1970, the petitioner became entitled to the refund of Rs. 50,900.78 on account of the differential excise duty (5% and 496) from June 1, 1970 to March 31, 1971. The petitioner submitted refund claims for the subsequent periods from time to time. The Assistant Collector, Customs and Central Excise, Jodhpur (non-petitioner no. 3) by his order no. 20661 dated August 8,- 1973, rejected the claim for the refund of the central excise duty amounting to Rs. 58,861.10 on merits as well as on the ground of limitation, holding that the petitioner's claim to concessional assessment at the rate of 4% had been rejected by him by his order no. 20652 dated August 8, 1972. The Appellate Collector, Customs and Central Excise, New Delhi (non-petitioner no. 2), by his order (Annexure 5) dated October 29, 1975, dismissed the appeal on the ground that the petitioner's appeal in the matter of concessional assessment (revised classification list) had been rejected by his order dated October 3, 1973. He also held that the petitioner's refund claims were not admissible and had been correctly rejected by non-petitioner no. 3. A revision was filed u/s 36 of the Central Excises and Salt Act, 1944 before the Government of India, Ministry of Finance, Revenue Department, New Delhi. The petitioner's claim regarding revised classification list (i.e., claim to concessional rate of excise duty at 4% in place of 5%) had already been accepted by order annexure 3 dated April 1, 1978 and, therefore, it agreed in principle that the petitioner was entitled to claim refund of differential excise duty paid over and above 4%. It, however, did not allow the entire claim of the petitioner for refund and dismissed the same for the period from April, 1970 to September, 1971 vide its order dated April 6, 1978 on the ground that the same was barred by time under Rule 11 read with Rule 173 J of the Rules. This order was sent to the petitioner under an endorsement no. F. 195/8/10/120/76-CXV dated May 25, 1978/December 22, 1978, which was received by the petitioner on or about December 26, 1978. The writ petition was

filed for the reliefs claimed by the petitioner on January 9, 1979.

3. On behalf of non-petitioner no. 1, reply was filed on July 23, 1979, contesting the writ petition on various grounds.

4. We have heard Mr. L.R. Mehta, assisted by Mr. Rajendra Mehta, learned counsel for the petitioner, and Mr. J.P. Joshi, learned counsel for the non-petitioners.

5. Mr. J.P. Joshi, appearing for the non-petitioners, contended that the application for refund, having been made beyond the period of limitation, it was rightly not entertained. A somewhat similar question arose in *D. Cawasji and Co. v. State of Mysore* 1978 ELT (154). K.K. Mathew, J. speaking for the court, observed as under :-

"Therefore, where a suit will lie to recover moneys paid under a mistake of law, a writ petition for refund of tax within the period of limitation prescribed, i.e., within three years of the knowledge of the mistake, would also lie. For filing a writ petition to recover the money paid under a mistake of law, this court has said that the starting point of limitation is from the date on which the judgment declaring as void the particular law under which the tax was paid was rendered, as that would normally be the date on which the mistake becomes known to the party. If any writ petition is filed beyond three years after that date, it will almost always be proper for the court to consider that it is unreasonable to entertain that petition, though,, even in cases where it is filed within three years, the court has a discretion, having regard to the facts and circumstances of the each case, not to entertain the application.

We are aware that the result of this view would be to enable a person to recover the amount paid as tax even after several years of the date of payment, if some other party would successfully challenge the validity of the law under which the payment was made and if only a suit or writ petition is filed for refund by the person within three years from the date of declaration of the invalidity of the law. That might both be inexpedient and unjust so far as the State is concerned.

A tax is intended for immediate expenditure for the common good and it would be unjust to require its repayment after it has been in whole or in part expended, which would often be the case, if the suit or application could be brought at any time within three years of a court declaring the law under which it was paid to be invalid, be it a hundred years after the date of payment. Nor is there any provision under which the court could deny refund of tax even if the person who paid it has collected it from his customers and has no subsisting liability or intention to refund it to them, or, for any reason, it is impracticable to do so."

6. The learned single Judge in *R.J. Engineering and Iron Re-Rolling Mills Vs. Union of India (UOI) and Others*, noticed *D. Cawasji's* case 1978 ELT (154), and excerpted paras 9, 10, 11 and 12 of the report. We have already reproduced paras 8, 9 and 10.

7. In an earlier Division Bench judgment in *Prem Cables Pvt. Ltd. Vs. Assistant Collector (Principal Appraiser) Customs and Others*, to which I was a party, questions in regard to delay and refund of the duty recovered illegally, came up for consideration. It was held by the Division Bench that the writ petition cannot be dismissed solely on the ground of delay and laches and it is open to the High Court to interfere to avoid hardship to a party and permit him to invoke the extraordinary jurisdiction envisaged by Article 226. It was further held that the relief for the refund of the illegally collected amount can be granted to the petitioner after quashing the orders of the excise authorities, if the excise duty has been illegally realised. In this case, the petitioner has submitted the application for refund of differential excise duty on September 8, 1972. Non-petitioner no. 3 rejected his claim on August 8, 1973. The appeal was rejected on October 29, 1975 and, thereafter, the revision was rejected on April 6, 1978. It was after the decision of the revision by order annexure 3 dated April 1, 1978, that the petitioner was liable to pay excise duty on his products at the rate of 4% only. The petitioner got the "knowledge of the order passed in revision on December 26, 1978 and, thereafter, the writ petition was filed on January 9, 1979. It may be stated that until the order was passed by non-petitioner no. 1, the petitioner was not given the benefit of concessional rate. It was only after the passing of the order by the Government of India, that the benefit became available to the petitioner. The said order annexure 3 dated April 1, 1978 entitled the petitioner to the refund of the difference in the amount of excise duty between 5% and 4%. The petitioner submitted the revised classification list on April 15, 1972. The Assistant Collector passed the order on August 8, 1972. The appeal against that order was decided on October 25, 1975. Against this order, the Central Government decided the revision on April 1, 1978, and held that the petitioner was liable to pay excise duty at the rate of 4% and not 5%. The writ petition, as stated above, was filed on January 9, 1979. The petitioner has been pursuing his remedy and ultimately by order passed in revision it was "decided that it is liable to pay 4%. In these circumstances non-petitioner no. 1 was not right when it passed the order Annexure dated April 6, 1978 holding that the refund claim for September, 1971 is allowed and the rest rejected on the ground of limitation under Rule 11 read with Rule 173J of the Rules. In a case where payment is made under a mistake of law, generally the mistake becomes known to the party only when either the court declares it invalid or it is shown by the party challenging it that he has made the payment as he has no knowledge about it.

8. Adopting the reasons given in *D. Cawasji's case* 1978 ELT (154), and *R.J. Engineering and Iron Re-Rolling Mills Vs. Union of India (UOI) and Others*, the order annexure 6 dated April 6, 1978, cannot be sustained to the extent that the petitioner's claim for refund for the period from June 1, 1970 to March 31, 1971, has wrongly been disallowed. The petitioner is entitled to the refund of the amount, which is said to be Rs. 50,900.78 being the difference in the rate of duty, i.e., between 5% and 4%.

9. The result is that the writ petition is allowed and the orders annexures 3, 4, 5 and 6, declining the refund to the petitioner under Rule 11, read with Rule 173J of the Rules are quashed. The non-petitioners are directed to refund the amount relating to the difference in excise duty from 5% to 4% paid by the petitioner. It is further ordered that the payment should be made to the petitioner within six months from today, or it may be adjusted to the future duties, payable by the petitioner.

10. In the circumstances of the case, the parties are left to bear their own costs.