(1985) 10 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No. 87/79

Prem Cables Private Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 29-10-1985

Acts Referred:
Central Excise Rules, 1944 — Rule 11, 173J

Citation : (1986) 9 ECC 295 : (1986) ECR 533 : (1987) 32 ELT 662

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : L.R. Mehta, for the Appellant; B.R. Mehta, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—By this writ petition, the petitioner has claimed refund of the differential Excise duty at the rate of 1% of Rs. 25,251.54 for the period commencing from 1st April, 1971 to 10th September, 1971 irrespective of the provisions of Rule 11 read with Rule 173J of the Central Excise Rules, 1944.

2. The petitioner''s case is that the duty at the rate of only 4% could be charged and not at the rate of 5%, which claim has been upheld but refund has not been allowed by the excise authorities. The petitioner has sought quashing of the orders Annexure 4, dated 8th August, 1973 passed by the Assistant Collector, Annexure 5, dated 25th October, 1975 of the Appellate Collector and Annexure 6, dated 6th April, 1978 of the Government of India, Ministry of Finance, Department of Revenue.

3. A similar question arose before this Court between the same parties in S.B. Civil Writ Petition No. 88/79 - Prem Cables Ltd. Vs. Union of India (UOI) and Others, which was decided on August 9, 1985 9 ECC 290 The learned Single Judge relied on the decisions in R.J. Engineering and Iron Re-Rolling Mills Vs. Union of India (UOI) and Others, Cawasji and Co. v. State of Mysore 1978 ELT

(154). The learned Judge held that the petitioner is entitled to the refund of the amount being the difference in the rate of duty, i.e., between 5% and 4% and he further observed that non-petitioner No. 1-Union of India was not right when it passed the order dated April 6, 1978 declining the refund claim other than the claim for September, 1971 on the ground of limitation under Rule 11 read with Rule 173J of the Rules. In view of the aforesaid decision of this Court, the impugned orders cannot be sustained rejecting the petitioner''s claim for refund of the amount and the petitioner is entitled to the refund of the aforesaid amount.

4. In the result the writ petition is allowed, the orders Annexures 4, 5 and 6, declining the refund to the petitioner are quashed. The non-petitioners the directed to refund the amount of Rs. 25,251.54 relating to the difference in Excise duty paid by the petitioner for the period 1st April, 1971 to 10th September, 1971. It is further ordered that payment shall be made to the petitioner within three months from today, or it may be adjusted in the future duties, payable by the petitioner.

5. The parties are left to bear their own costs.