(1991) 09 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No''s. 8245 and 8246 of 1983

Premier Paper Products APPELLANT

Vs

Superintendent of C. Ex., Coimbatore RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B

Citation : (1995) 80 ELT 15

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Judgement

Kanakaraj, J. 1. The petitioners are engaged in the business of converting duty-paid poster paper into wax coating paper. They are assessees under the Central Excises and Salt Act, 1944 (hereinafter called "the Act"). They had been paying the duties as demanded by the respondents at the time of removal of the wax-coated papers. According to the petitioners the only work done by them is to coat duty-paid poster paper with paraffin wax on either side. Therefore the duty-paid poster paper continued to be used and there was no manufacturing process in the conversion as above. However, they had paid duty under mistake of law. It is now well-settled as it would be seen from Kwality Coated Products Vs. Government of India and Another, that such coating of duty-paid paper would not attract excise duty. The Notification No. 184/76-C. E., dated 27-5-1976 issued by the Government of India was held to be illegal and was quashed.

2. In view of the law as declared by this court, the petitioners filed refund applications as per details given below :-

In their letter dated 23-2-1981 it was stated that duty collected from the petitioners in respect of waxed paper against Tariff Item 17(2) of the Central Excise Tariff 1944, from 3-11-1980 onwards should be treated as having been paid under protest. It was also made clear "payment of further duty for clearance of wax paper will be paid under protest."

3. The Writ Petition No. 8245 of 1983 is for the issue of a writ of mandamus directing the second respondent to dispose of the Refund application dated 26-5-1981. The Writ Petition No. 8246 of 1983 is for the issue of a writ of mandamus to direct the second respondent to dispose of the refund application dated 5-3-1982 and to pass orders in accordance with law.

4. Respondents have not filed counter affidavit. However, Mr. P. Narasimhan, learned counsel for the respondents sought to argue that the applications for refund were beyond the period of limitation and therefore the petitioner cannot seek a writ of mandamus as prayed for. It appears to me that the two writ petitions have to be dealt with independently because in one case the question of limitation would bar the application for refund, while in the other case the bar of limitation may not arise. Section 11B(1) of the Act is as [as] follows :-

"Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the (relevant date) :

Provided that the limitation of six months shall not apply where any duty has been paid under protest."

Learned counsel for the petitioners relies on the letter dated 23-2-1981 as making the bar of limitation inapplicable. On the other hand, Mr. P. Narasimhan, contends that the question of paying the duty under protest will arise only when the duty is paid, it is not open to an assessee to make payment without making a protest and subsequently sending a letter to treat the payments as having been made under protest. This contention of Mr. P. Narasimhan, has to be accepted. Therefore, the letter dated 23-2-1981 can save the petitioners only with effect from the date of the letter namely, 23-2-1981. The claim for refund for the period from 23-2-1981 till 17-2-1982 which forms the subject matter of the refund application dated 5-3-1982 is therefore justified and legal and requires consideration. As already stated, Writ Petition No. 8246 of 1983 is for issue of a writ of Mandamus to direct the second respondent to consider his application dated 5-3-1982. Consequently Writ Petition No. 8246 of 1983 is allowed and there will be a direction as prayed for to consider the refund application at least in respect of the duty paid from 2-5-1981 to 17-2-1982. The second respondent is directed to dispose of the refund application dated 5-3-1982 within 12 weeks from the date of receipt of this order. There will however, be no order as to costs.

5. So far as Writ Petition No. 8245 of 1983 is concerned, that relates to the refund application dated 26-5-1981 relating to the period from 10-4-1974 to 30-4-1981. It is not disputed that the payments were made voluntarily without any protest. Therefore Section 11B(1) bars any refund application preferred beyond six months from the relevant date. Consequently, Writ Petition No. 8245 of 1983 will stand dismissed. There will however, be no order as to costs.

