

(1992) 11 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 170 of 1992

Rain Bow Steels Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-11-1992

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B, 35F

Citation : (1993) 49 ECR 199

Hon'ble Judges : M.C. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

A.P. Misra, J.—Learned Counsel for the petitioner stated that his client does not desire to file rejoinder affidavit Therefore this case is taken up for final disposal in view of the exchange of affidavits in accordance with the Rules of Court

2. The petitioner seeks quashing of the order dated 13th January, 1992, passed by the Superintendent, Central Excise, Muzaffarnagar, respondent No. 3 (Annexure 3 to the petition) and directing the respondents to release the frozen amount of Rs. 5,27,904.35 forthwith and further to legalise the credit of amount of Rs. 7,12,267.72 p.

3. The Collector, Central Excise, Meerut, by order dated 25th April, 1989, imposed a penalty of Rs. 10,00,000.00 on the petitioner and confiscated the seized M.S. Ingots, which was seized on 9th July, 1987, the total duty imposed by the said authority was to the tune of Rs. 11,99,050.84. The petitioner, feeling aggrieved, filed an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi along with the stay/waiver application. The Tribunal by its order dated 29th September, 1989, disposed of the stay/waiver application and directed the petitioner to pay full amount of duty of Rs. 11,99,050.84 as aforesaid and waived the pre-deposit of the penalty amount. Thereafter, the petitioner filed a writ petition in this Court wherein the Court directed the

Tribunal to dispose of the case within three months. As per direction in the said writ petition the petitioner deposited Rs. 11,99,050.84 on 30th January, 1990. The Tribunal finally disposed of the appeal by means of an order dated 30th April, 1991, set aside the order passed by the Collector, Central Excise and also directed the case for de novo adjudication. Thereafter, the Collector, Central Excise, adjudged the Central Excise Duty on the petitioner to the tune of Rs. 3,56,783.12 p. and a penalty of Rs. 1,00,000.00 along with Rs. 30,000.00 as redemption fine, the total amount comes to Rs. 4,86,783.12 p. It is after this order becoming final the petitioner claims that the balance amount out of what has been ordered by the Collector as aforesaid is to the credit of the petitioner as the difference amount to the tune of Rs. 7,12,267.72 is the amount which would be after deducting the aforesaid amount from the total deposits made by the petitioner earlier as aforesaid. It seems thereafter without obtaining any formal order from the concerned authorities for refund of the aforesaid amount for utilising for the clearance of excisable goods vide O.P.I. Nos. 553 to 591. In consequence thereof the Superintendent, Central Excise froze the balance amount of Rs. 5,27,904.35, which is balance as per P.L.A. on 13th January, 1992, with a clear direction not to utilise the same in future clearance.

4. On these facts, the question which arose and the petitioner is claiming whether the respondent authorities were right in passing the impugned order dated 13th January, 1992, and not refunding the amount which the petitioner is claiming to be refundable to him. The argument on behalf of the petitioner is that the respondent authority, without even being applied for refund, should have refunded this amount to the petitioner as this was the amount to be refunded in pursuance to the order of the aforesaid Tribunal the appellate authority in view of Section 11B, Sub-section (3) of the Central Excises and Salt Act, 1944. Under that section, as it stood at the relevant time, it is provided that it is not necessary to make any claim. A refund is to be made in a case where it is a result of any order passed in appeal or revision under the Act. The contention is that not refunding this amount without petitioner even making such an application the respondents committed the legality (sic). The petitioner further relied on Section 35F, under which the amount of Rs. 11 lacs and odd was deposited by him. It is not in dispute that the said amount was deposited by the petitioner which was the Duty imposed by the Collector, Central Excise, against which he has preferred appeal before the said Tribunal. The deposit of the said amount was a condition precedent for the entertainment of the appeal. The argument is that since that deposit was made u/s 35F read with Section 11B(3) it should be treated to be an order passed by the appellate authority. The appeal itself was allowed and the case was remanded back to the Collector, Central Excise for passing a fresh order de novo. The contention raised by the petitioner is not acceptable on the language of Section 11B(3) of the Act and on the facts and circumstances of this case. The said deposit is made as statutory obligation caused on the petitioner u/s 35F for entertainment of the appeal, but the deposit was not in consequence of any order passed by the appellate authority. There is

no direction issued for the refund by the appellate authority while deciding the appeal finally. The contention therein that the respondent should have refunded this amount u/s 11B(3) even without making a claim by the petitioner is not sustainable. Accordingly the contention of the petitioner in this regard is rejected.

5. It is significant to refer to Rule 173Q (sic) of the Central Excise Rules, 1944 which refers to the maintenance of account by the assessee wherein it is provided that the assessee shall periodically make credit in such account-current, by cash payment into the treasury (so as to keep the balance, in such account-current) sufficient to cover the Duty due on the goods intended to be removed at any time. The petitioner in this case before getting the order for refund suo motu credited the whole of the aforesaid difference amount to his P.L.A. account and started utilising the same as we have referred to above. This was not proper and was against the provisions of the Act and the Rules and, therefore, it is not possible for us to hold that the action of the respondents, which has been impugned in this case, was illegal.

6. Coming to the main argument raised on behalf of the petitioner regarding the refund of the aforesaid claim, from perusal of the counter affidavit and. after hearing learned Counsel for the respondents, the claim of refund for the aforesaid balance amount has not been even disputed before us, but we find in the present case, since the petitioner has not even made an application for the aforesaid claim and has proceeded to treat the said credit belonging to them and started utilising the said amount, the order has been passed by the concerned respondent authority. We find, in view of this fact, when the respondents are not disputing the amount of refund it is appropriate that the petitioner may make afresh application before the concerned respondent authority for refund of the aforesaid amount within a period of two weeks from today and the respondent authority will pass appropriate orders on the refund application to be made by the petitioner in the light of observations made by us above within a period of two months from the date the certified copy of our order is filed before the said authority.

With the aforesaid observations this petition is finally disposed of. Costs on parties.