

(2001) 09 MAD CK 0090

In the Madras High Court

Case No : Writ Appeal No. 1423 of 1999

Rallis India Limited

APPELLANT

Vs

Assistant Collector of C. Ex., Coonoor

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

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

Citation : (2002) 81 ECC 700 : (2002) 139 ELT 265

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : C.N. Natarajan for N. Inbarajan and S. Shanmugam, for the Appellant; R. Santhanam, A.C.G.S.C., for the Respondent

Judgement

V.S. Sirpurkar, J.—The Writ Appeal is against the order of the learned single Judge, whereby, the writ petition was dismissed. Learned single Judge had also given a direction, while dismissing the writ petition, that the petitioner be given liberty to approach the Appellate Forum under the Act for the denial of refund, if they were advised to do so.

2. The writ petition pertained to applications made for refund of a sum of Rs. 81,81,031.48. The said refund applications seem to have been made on two dates, they being 8-12-1988 and 14-5-1990. There is a short factual background to this controversy. It is an admitted position that the claim of the petitioners was accepted right up to the Supreme Court. In fact, the claim was accepted by the Collector of Central Excise in Appeal No. 469 of 1982, dated 21-12-1983. On that basis, the petitioners also had stopped payment of duties, but were directed to pay duties on the ground that the order of the Collector dated 21-2-1983 was challenged before the Tribunal. It is an admitted position that the petitioners started paying the duty "under protest". The total duty paid comes to Rs. 81,81,031-48. Ultimately when the petitioners succeeded till last before the Supreme Court, they filed a Writ petition in W.P. No. 13493 of 1989 and in that writ petition the High Court directed the respondents to finalize the classification

lists for the period 1-6-1984 to 28-2-1986 (during which petitioners had paid duty under protest) on or before 30-5-1990. Accordingly, it seems that an order came to be passed on 29-6-1990, whereby the lists were finalized, the exemption was granted and the protest was vacated. What normally should have followed was the ministerial act of refund of duty paid under protest. But that did not occur and therefore the petitioners approached this Court by way of W.P. No. 13537/1991 and prayed therein for the execution of the order dated 29-6-1990 and the resultant refund of the duties paid under protest earlier for the period 1-6-1984 to 11-10-1984 and 12-10-1984 to 28-2-86. The Department took the stand that the refund claims were being processed. This stand is found at para 3 of the counter affidavit, wherein the Department has stated as follows :

"the above two claims are being processed keeping in view the "Principle of unjust enrichment" since duty has been already collected from the customers. Aggrieved against the pending disposal of the refund claims the petitioners have filed this Writ Petition."

Later on also in the counter the department seems to have toed the same line that the refund claims were being processed keeping in view the criterion of unjust enrichment. Very curiously enough in this counter, there is nothing said about as to what has exactly been done with those so called pending applications which were allegedly being processed.

3. Learned single Judge made reference to these facts and noted that the petitioners had, in fact, become entitled to the refund because of the order dated 29-6-1990. However, learned Judge made the following observations in paragraph 8 :

"..... Therefore, from the above it is made very clear that the only grievance of the petitioners herein is the denial of refund and it is stated even by the respondents that against the denial of refund the petitioner may approach the proper Appellate Forum made available under the Act. That being so, before coming to this Court by way of writ, the petitioners should have exhausted the above said appeal remedy available to them under the Act itself. But that has not been done by the petitioners in this case. In such circumstances, this Court is not going into any of the merits of the case and it is open for the petitioners herein to place all their contentions and claims raised herein before the said Appellate Forum made available under the Act. Therefore, in this view of the matter, the writ petition has to be dismissed with the above observation."

4. Learned Judge also granted liberty to the petitioners to file an appeal for their claim of refund.

5. Learned Senior Counsel appearing on behalf of the petitioners brought to our notice the provisions of Section 35 of the Central Excise and Salt Act, 1944, providing appeals to Collector (Appeals) which is as follows :

"35. Appeals to Collector (Appeals). -

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise officer lower in rank than a Collector of Central Excise may appeal to the Collector of Central Excise (Appeals) within three months from the date of the communication to him of such decision or order :

Provided that the Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months."

6. Learned Senior Counsel then points out that existence of any "decision" or "order" passed under the Act by the Central Excise Officer lower in rank than a Collector is a sine qua non for any appeal being filed. Learned Counsel further points out that such order must also be communicated to the party, so that the party could file an appeal within three months from the date of such communication. He further points out that there is no such order passed on the refund applications made by the petitioners/appellants. This position when it was specifically put to the learned Standing Counsel of the Central Government he has fairly admitted that the applications for refund have yet not been ordered upon.

7. Under the circumstances, the observations made by the learned single Judge and the direction to file an appeal "provided under the provisions of the Act" become unworkable as there is no order in existence to file any appeal against. It would be, therefore, in the fitness of things to direct the respondents to immediately proceed with the applications for refund, obviously under the provisions of Section 11-B and finalise the same. The applications are unnecessarily pending for the last more than twelve years. They should have been decided upon earlier. Be that as it may, we direct the said applications to be finalised within three months from the date this order is communicated to the respondent. Learned Standing Counsel for the Central Government undertakes to inform the order immediately. Needless to mention that an opportunity to be heard would be provided to the petitioners, who shall not protract the proceedings. The order of the single Judge is modified to this extent.

8. The writ Appeal is disposed of with the above modification. No costs.