**(1993) 03 MAD CK 0067**

**In the Madras High Court**

**Case No :** Writ Petition No. 10631 of 1983

Ramaraju Surgical Cotton Mills Ltd. APPELLANT

Vs

The Assistant Collector of Central Excise and Others RESPONDENT

**Date of Decision :** 11-03-1993

**Acts Referred:**

**Citation :** (1993) 43 ECC 142

**Hon'ble Judges :** Mishra, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

Mishra, J.—The petitioners herein claimed exemption for their goods from the local Excise authorities pursuant to notification dated 1.3.1978 . It is said, however, that the goods classified as Central Excise Tariff No. 68 of the First Schedule to the Central Excise and Salt Act, 1944 as amended, alone were exempted first by notification No. 55/75 CE dated 1.3.1975 and again, by Notification No. 62/78 CE dated 1.3.1978 petitioners, however, found that local excise authorities continued levying the duty saying that they were awaiting clarifications in the matter. It is said after several representations of the petitioners to the Collector, Central Excise, Madurai, on 16.5.1978 and to the Central Board of Excise on 27.11.1978, the Superintendent of Central Excise, Sankarankoil, informed them that their mills would be outside the excise control in the light of the clarifications given by the Collector of Central Excise, Madurai, under his Trade Notice No. 52/80 (5/ All other goods/NES/80) dated 25.3.1980. Petitioners, were allowed the exemptions only after 6.4.1978, i.e., the date on which the petitioners gave a protest letter. Petitioners, however, who had paid the duty in accordance with the rules without having been benefited by the exemptions applied for refund to the Assistant Collector, Sivakasi, on 10.5.1980. The Assistant Collector made a refund of the duty realised on and from 6.4.1978 but not from 1.3.1978 to 5.4.1978. When the petitioners, however, pursued the matter claiming the balance amount they were first given a notice and thereafter holding finally that their claim for the period 1.3.1978 to 5.4.1978 had become barred by limitation the claim was rejected.

2. We need not, in the instant case, go to the further story of appeal and the order passed in the appeal, etc, for, it is not in dispute that the notification dated 1.3.1978 exempted fully all goods falling within the description of ''all drugs, medicines, pharmaceuticals and drug intermediaries not elsewhere specified'' and that the goods on which duty has been realised from the petitioner fall under this category/exemption. It is also not in dispute that exemption is effective from 1.3.1978. It is also not in dispute that petitioners sought exemption from the month of March, 1978 but when the department''s local authorities said that they were awaiting clarifications in the matter they paid taxes under protest and gave a protest fetter on 6.4.1978.

3. Rule 11 of the Central Excise Rules, for short ''the Rules'', is attracted when a duty is paid in excess and a claim is made for which it has a prescription of six months limitation. In the instant case, however, the petitioners'' payments of the duty for the period from 1.3.1978 to 5.4.1978 have obviously been under protest. In any case one can say that any payment as a duty on the goods for the period from 1.3.1978 to 5.4.1978 was neither payment of any tax nor payment pursuant to any valid order of the respondents. The local excise officers alone were responsible for not giving to the petitioners benefits of exemption notification. Since there is no counter it will be deemed to have been admitted and the local officers of the respondents alone have to take the blame for the plight of the petitioners. It is a fit case, in my opinion, therefore, in which the benefit should be given to the petitioners and it should be held that the provision of Rule 11 as was in force during the period of the claim of the petitioners will not be attracted.

4. Even though the reason for which the refund has not been allowed to the petitioners is not sustainable and therefore, the impugned orders cannot be approved, I am not inclined to order for the refund straightaway for, it is not known whether the petitioners had passed on the duty to the consumers or not. It will be a fit case in my opinion for exercising caution in this regard and instead of any direction to the respondents to refund the amount of duty realised from the petitioners for the period from 1.3.1978 to 5.4.1978 for direction to examine whether without application of the rule of limitation as in Rule 11 of the Central Excise Rules (applicable at the relevant time) the petitioners are not entitled to claim any refund for, the same has been passed on to the customers by them.

5. In the result, the petition is allowed. The impugned orders are quashed. The case is remitted to the Assistant Collector of Central Excise, Rajapalayam to consider in the light of the observations and directions above whether any refund should be given to the petitioners for the period 1.3.1978 to 5.4.1978 in which tax (duty) has been realised from them. No costs.