

(1984) 11 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 277 of 1977

R.J. Engineering and Iron Re-Rolling Mills	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 27-11-1984

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 173J
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 72

Citation : (1985) 4 ECC 243 : (1986) 9 ECR 205 : (1985) 22 ELT 782

Hon'ble Judges : P.K. Banerjee, C.J

Bench : Single Bench

Advocate : L.R. Mehta, for the Appellant; J.P. Joshi, for the Respondent

Judgement

Pradyot Kumar Banerjee, C.J.—This rule is directed against an order made by the Assistant Collector, Customs and Central Excise Jodhpur, affirmed by the Appellate Officer and thereafter by the Central Government. All of them held that the application having been made beyond the period of limitation, the application cannot be entertained. Being aggrieved by the said order the petitioner moved this Court to obtain the present rule.

2. In a short compass the facts are that the petitioner wrote to the Departmental Authorities whether he is liable to pay excise duty if he manufactures the products from steel ingots or out of cut or broken steel ingots which according to him, by Notification No. 206/63, dated 30th November 1963, amended by notification of 1965, is free from excise duty. "

3. In reply to the said letter the petitioner was given to understand that he must pay the excise duty and that the notification does not hold good. It appears, it has been held by the Allahabad High Court in *Bansal Steels Co. v. Union of India* 1974 Tax LR 2439 that the excise duty is not payable on such matters. Thereafter, the petitioner came to know of the mistake committed by him in paying this excise duty till 18th January 1973. He applied to the Department for

refund of the money and they held inter alia that under Rule 11 read with Rule 173J of the Central Excise Rules the application is barred by limitation and therefore, was rejected. It appears, in the said judgment it was stated that the petitioner neither made any protest nor any representation during the period and the assessment was done on the final basis. This statement is not correct on fact. On the other hand, even before the manufacture was made from the ingots, the petitioner wrote to the Excise Department to know whether this is free from excise duty and they wrote back to say that it will not be free and thereafter the petitioner went on paying and the payment which was made and which is the matter in dispute, was from August 27, 1971 to December 31, 1971, amounting to Rs. 12,488.15 p. Against this judgment the petitioner preferred an appeal. The appeal was dismissed and the revisional application was also dismissed.. Being aggrieved, the petitioner moved this Court to obtain the present rule.

4. This rule was issued on July 4, 1977. The fact which is not in dispute is that the Government accepted the interpretation of the Allahabad High Court that the manufacture of such things from ingots is not liable to excise duty.

5. Mr. Joshi appearing for the respondents, however, contended that the application under Article 226 for refund was belated. Apart from the fact that such plea should not be taken by the Government vis-a-vis a citizen, the question is, the petitioner for a long time tried to get back his money from the Department and proceeded departmentally to get it. When the Department held that the application for refund is barred by limitation, up to the Union of India the petitioner challenged these orders and also applied for refund of the money. It appears that even in some cases the Department itself has made an order of refund, in respect of an application under rule 11 of the Excise Rules.

6. In the circumstances, therefore, in my opinion, it cannot be said in the facts and circumstances of the case that the application of the petitioner under Article 226 is belated. On the other hand, the petitioner placed his grievance before the Department and when he ultimately failed, immediately moved this Court to obtain the present rule.

7. In *D. Cawasji and Co. v. State of Mysore* 1978 E L T 154 it has been held that for filing a writ petition for recovery of money paid under a mistake of law is three years from the date when the mistake is known, be it a hundred years after the date of payment and this is a reasonable standard by which delay in seeking remedy under Article 226 can be measured. In paragraphs 9, 10, 11 and 12 it has been held by the Supreme Court as follows : -

"9. We are aware that the result of this view would be to enable a person to recover the amount paid as tax even after several years of the date of payment, if some other party would successfully challenge the validity of the law under which the payment was made and if only a suit or writ petition is filed for refund by the person within three years from the date of declaration of the invalidity of the law. That might both be inexpedient and unjust so far as the State is

concerned.

10. A tax is intended for immediate expenditure for the common good and it would be unjust to require its repayment after it has been in whole or in part expended, which would often be the case, if the suit or application could be brought at any time within three years of a Court declaring the law under which it was paid to be invalid, be it a hundred years after the date of payment. Nor is there any provision under which the Court could deny refund of tax even if the person who paid it has collected it from his customers and has no subsisting liability or intention to refund it to them, or, for any reason, it is impracticable to do so.

11. In the U.S.A., it is generally held that in the absence of a statute to the contrary, taxes voluntarily paid under a mistake of law with full knowledge of facts cannot be recovered back while taxes paid under Appeal allowed mistake or ract may ordinaruy be recovered back (see corpus Juris Secundum, Volume 84, page 637). Although Section 72 of the Contract Act has been held to cover cases of payment of money under a mistake of law, as the State stands in a peculiar position in respect of taxes paid to it, there are perhaps practical reasons for the law according to a different treatment both in the matter of the heads under which they could be recovered and the period of limitation for the recovery.

12. The task of writing legislation to protect the interest of the nation is committed to Parliament and the legislatures of the States. We are referring to this aspect only to alert their attention to the present state of law."

8. In my opinion, in that judgment it is quite clear that the Court has a discretion, having regard to the facts and circumstances of the case, to entertain the application. It has also judicial discretion to entertain the application if the delay is explained. In my opinion, in the facts of the present case, it is clear that the petitioner was running from pillar to post for the redress of his grievances before he made the application under Article 226 of the Constitution of India for an appropriate order.

9. In the circumstances, therefore, in my opinion, the rule should be made absolute. The respondents are directed to refund Rs 12,488.15 paid by mistake by the petitioner to the respondents.

10. The payment must be made within 6 months from today or may be adjusted to future duties.