**(1992) 02 GAU CK 0011**

**In the Gauhati High Court**

**Case No :** Civil Original (Contempt) Petition No. 121 of 1991

Sarda Plywood Industries Limited — APPELLANT

Vs

L.Valvula, Collector, Customs and Central Excise — RESPONDENT

**Date of Decision :** 03-02-1992

**Acts Referred:**
Central Excises and Salt Act, 1944 — Section 11B, 11B

**Citation :** (1992) 1 GLJ 521

**Hon'ble Judges :** R.K.Manisana Singh, J and J.M.Srivastava, J

**Bench :** Division Bench

**Advocate :** S.Mitra , R.Gogoi, K.N.Choudhary, J.P.Bhattacharjee, Advocates appearing for Parties

## Judgement

R. K. Manisana, J.—The facts leading to the present contempt petition are thus. This Court made an order on 20.5.91 in Civil Rule No. 2849 of 1991 directing the respondents to refund an amount of Rs. 1,58,05, 582.12 within two months. Under order dated 6.6.91 in the said Civil Rule relaxation of the period of the twomonth time granted to the respondents was refused. The respondents failed to refund the money. Therefore the present petition was filed for initiating contempt proceeding for violation of the order dated 20.5.91. On 19.7.91, this Court issued a notice to show cause as to why contempt proceeding should not be drawn up against the respondents. In the meanwhile, respondents filed Special Leave Petition before the Supreme Court against the order dated 20.5.91 of this Court made in Civil Rule No 2849 of 1991. The Supreme Court in SLP No 1284/91 made an order on 19.8.91 adjourning the case for two weeks to require an affidavit to be filed by the respondents herein that the question of refundability is pending consideration in the appeal pending before the Tribunal. The SLP was fixed on 30.8.1991. On 30.8.91, the Supreme Court passed the following order; "Leave granted. Pending appeal, there will be an interim stay against the implementation of the High Court Judgment." The High Court judgment is referable to the order dated 20.5.91 of this Court The appeal before the Tribunal was dismissed on 27.9.91. Thereafter, this Court, on 4.10.91, made the following order

"The Supreme Court stayed the order dated 20.5.91 of this Court, vide order dated 19.8.91 in SLP No, 12949/91 till disposal of the appeal before 1 the Tribunal. The Tribunal (CEGAT) has disposed of the appeal and the stay matter rejecting both the prayers vide its order dated 27.9.91.

Therefore, the contempt proceeding is now to be initiated and proceeded.

Issue notice on the respondents/Contemner Nos. 1 and 2 to appear in person before this Court on 18.11.1991 and to show cause as to why they should not be punished under the provisions of the Contempt of Courts Act.

Pendency of this proceeding shall not be a bar for the respondents to make the payment to the petitioners."

" 2. The respondents have not filed counter. Instead of filing counter, the respondents have filed an application praying for not proceeding with the case (contempt proceeding) in view of the pendency of Special Leave Petition before the Supreme Court.

3. We are of the view that the respondents cannot be punished for contempt of Court in view of the Central Excises and Customs Laws (Amendment) Act, 1991 which came into force on 20.9.91. By the Amending Act, the Central Excises and Salt Act, 1944 has also been amended. Section 11B after the amendment, runs as follows:

"Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in subsection (2)."

In view of subsection (3), refund has been restriced except as provided under subsection (2). Subsection (2) provides that, if, on receipt of any such application, the Assistant Collector of Central Excise is satisfied that the whole of any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund established under section 12C, The proviso to subsection (2) provides particulars of the duty of excise, deposits, etc. to be refunded to an applicant.

4. In the aforesaid view of the matter, it is, now, for the Assistant Collector of Central Excise to decide whether the excise duty paid by the applicant is refundable or is to be credited to the Consumer Welfare Fund established under section 12C. For these reasons, we are inclined to drop the contempt proceeding. The petition is closed accordingly.

 