(1999) 03 MP CK 0006

In the Madhya Pradesh High Court

Case No : First Appeal No. 80 of 1991

Shree Synthetics Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 19-03-1999

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80, 9, 96
Customs Act, 1962 — Section 11, 27, 40

Citation : (2000) 70 ECC 650

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Jain, (J)

1. This appeal u/s 96 of the CPC is directed against the judgment dated 20.3.1991 passed by Vth Additional District Judge, Ujjain, in Civil Suit No. 24-B/89, dismissing suit of the appellant -- Plaintiff on the ground that jurisdiction of Civil Court was barred in the matter.

2. The suit giving rise to this appeal was filed against Union of India for refund of Rs. 65,907.60, which, according to the plaintiff, was paid in excess while paying custom duty the provision of Customs Act, 1962, (for short, ''the Act of 1962''), on the goods imported by the appellant -- Plaintiff in connection with the manufacturing activity of its factory situated at Ujjain. According to the plaintiff he learnt about the excess payment on 2.7.1987 and whereupon he, on 2.7.1987, filed a refund claim before the Assistant Collector, Customs & Central Excise, Ujjain. The said claim was rejected by the Assistant Collector on 2.6.88 on the ground that it was barred by limitation as provided u/s 27(1) of the Act of 1962. Plaintiff after serving the respondents with a notice u/s 80 of CPC filed suit before the Court below for recovery of the said excess amount. The suit was resisted by the defendants who, inter-alia, contended that jurisdiction of Civil Court was barred in the matter. The trial Court framed a preliminary issue

regarding jurisdiction of the Court and vide its judgment impugned upheld the defandant''s objection and dismissed the suit as not maintainable.

3. I have heard Shri S.N. Kohli, learned Counsel for appellant and Shri B.G. Neema, learned Counsel for respondents.

4. Sub-section (1) of Section 27 of the Act of 1962 provides that a person claiming refund of any duty may make an application for refund of such duty to the Assistant Commissioner of Customs within the specified time limit. Sub-section (2) authorises the Assistant Commissioner of Customs to make order for refund if he is satisfied as to the claim of the applicant. Sub-section (3) confers exclusive jurisdiction on the Assistant Commissioner with regard to any such claim for refund and thus reads as follows:

(3) Nothwithstanding 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 regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2).

5. A plain reading of Sub-section (3) would make it clear that not only it excludes jurisdiction of any Court or Tribunal in the matter of refund of duty paid under the Act of 1962 but also nullifies effect of any judgment, decree, order or direction made by any Tribunal or any Court under any law for the time being in force. Any claim for refund of the duty paid under the Act of 1962 has to be dealt with only in accordance with the provisions of Section 27 and no refund shall be made except as provided in Sub-section (2).

6. Like Section 27 of the Act of 1962, Section 11B of the Central Excise and Salt Act, 1944, also provides for refund of excise duty paid under this Act. Sub-section (3) of Section 11B contains a provision which is para-materia to the provision of Sub-section (3) of Section 27 of the Act of 1962. Honble the Supreme Court, dealing with these provisions of the Acts of 1944 and 1962, in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , by a majority decision, held:

By virtue of Sub-section (3) of Section 11B of the Central Excises and Salt Act, and Sub-section (3) of Section 27 as amended by 1991 Amendment Act, all claims for refund (excepting those which arise as a result of declaration of unconstitutionality of a provision whereunder the levy was created) have to be preferred and adjudicated only under the provisions of the respective enactment. No suit for refund of duty is maintainable in that behalf.

7. Shri Kohli, learned Counsel for appellant has, however, strenuously contended that there being no dispute as to the excess payment, the Custom Authorities were bound to make the payment and the suit for such refund would be maintainable u/s 9 of CPC. He has placed reliance on a decision of Bombay High Court in Union of India v. Mansinghka Industries Pvt. Ltd. 1979 ELT (J) 158.1 am,

however, not impressed by the arguments. Decision in Mansinghka''s (supra) deals with the jurisdiction of Civil Court vis-a-vis to the provision of Section 40 of the Act of 1944 which bars suit of prosecution or other legal proceedings against the Central Government or against any officer of the Government in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act. Section 40 obviously deals with the protection given to the Central Government and its officers in respect of the act done by them in good faith under the Act. Judgment in Mansinghka''s case does not deal with the exclusion of Civil Court''s jurisdiction in respect of any refund claimed either u/s 11B of the Act of 1944 or Section 27 of the Act of 1962. In any case the decision of the Apex Court in Mafatlal (supra) sets at rest any controversy on the point and there can be no manner of doubt that in respect of any claim for refund of duty paid under any of the aforesaid two Acts, jurisdiction of Civil Court is barred and the claim, if any, has to be preferred and adjudicated upon under the aforesaid provisions of the Acts.

8. The Court below was thus right in holding that the jurisdiction of Civil Court was barred in the matter. The plaintiff has been rightly non-suited and no case for interference in appeal by this Court is made out.

9. The appeal thus fails and is dismissed but without any order as to costs.

