

(1997) 06 MAD CK 0025

In the Madras High Court

Case No : Writ Appeal No. 664 of 1993 and C.M.P. No. 9662 of 1993

Sivanandha Pipe Fittings Ltd.

APPELLANT

Vs

Superintendent of C. Ex., Hosur.

RESPONDENT

Date of Decision : 26-06-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 173B, 173C

Central Excises and Salt Act, 1944 — Section 11A, 11A(1), 11B, 35E, 35E(2)

Citation : (1998) 97 ELT 52

Hon'ble Judges : S.M. Abdul Wahab, J;Kanakaraj, J

Bench : Division Bench

Advocate : Shri N. Venkatrama, for Sri N. Inbarajan, for the Appellant; Shri K. Ramakrishna Reddy, Senior Central Government Standing Counsel, for the Respondent

Judgement

Kanakaraj, J.—The appellant filed W.P. No. 567/84 seeking a writ of Certiorari to quash the order of the 3rd respondent dated 27-12-

1983 and for consequential directions. To understand the scope of the prayer in the said W.P., we have to look into the facts of the case. The Writ

Petitioners are engaged in the manufacture of pipes (bevelled at ends), water well casing pipes, pipe bends, and ancillaries in their factory at Hosur.

The Superintendent of the Central Excise had approved the classification under T.I. 68 of the Central Excise Tariff. The petitioners sought for re-

classification under T.I. 26A(IV) of the Central Excise Tariff. A revised classification was approved by the Superintendent. Thereupon the

petitioners lodged a claim on 26-8-1983 for refund of the amount erroneously paid for the period from 12-5-1981 to 28-8-1983. By an order

dated 12-10-1983 the 2nd respondent ordered refund of Rs. 3,01,914.73 and sent a cheque for the said amount to the petitioner. After exercising

the powers u/s 35E(2), an appeal was taken on the file of 3rd respondent and notice was given to the petitioner Company. By the impugned order

dated 27-12-1983, the 3rd respondent set aside the order of the 2nd respondent dated 12-10-1983. The 3rd respondent also directed that the

petitioners should recredit the amount received by them by way of refund, within 7 days from the date of receipt of the appellate order.

2. Learned Single Judge of this Court who heard the writ petition, by a very elaborate order dated 17-11-1992 found that the order of the 3rd

respondent was perfectly justified and legal. He rejected the contention of the petitioner that the provisions of Section 11A of the Central Excise

Act should be read into the power of review u/s 35E of the Act. The writ petition therefore failed and hence the present appeal.

3. Before us Mr. N. Venkataraman, learned Counsel for the appellant has projected the argument on the basis of a single submission. His

argument is that Section 11A(1) provides for recovery of duties not levied or unpaid or short-levied or short-paid or erroneously refunded. This

provision of law enables the authority to require the assessee to show cause why the assessee should not pay the amount specified in the notice.

Section 11B provides for refund of duty to any person, provided application is made within the prescribed period of limitation detailed in Section

18 of the Act. Learned Counsel for the appellant then refers Rules 173B and 173C which provide for the assessee filing classification list and price

list respectively. The argument is once such classification is approved by the authority, the assessee is entitled to pay duty only on that basis, unless

of course, a review is undertaken u/s 35E of the Act. The argument is that even if the classification is reviewed by the appellate authority and a

different classification is made, that will not enable the authority from demanding payment as per the reclassified item without the original authority

invoking the provision of Section 11A of the Act by the issue of a show cause notice. In other words, the order of the appellate authority

reclassifying the tariff item, would not enable the original authority to demand the amount automatically without issuing show cause notice u/s 11A.

For this purpose, reliance is placed on the decision reported in Union of India (UOI) and Others Vs. Madhumilan Syntex Pvt. Ltd. and Another, .

We do not propose to go into this question at all. Because, we are firmly of the opinion that such an issue does not arise before us.

4. The impugned order dated 27-12-1983 by the 3rd respondent, only says that refund had been sanctioned by the 2nd respondent without applying the period of limitation on the ground that the goods had suffered duty twice. After referring to various decisions this aspect of the case is reversed by the 3rd respondent because the duty paid by the appellant was on the basis of an approved classification list. It is not a case of excise duty. In this view of the matter, the period of limitation prescribed u/s 11B of the Act should have been strictly applied. Viewed in this aspect, the refund of Rs. 3,01,915.73 for the period from April 1981 to 26-2-1983 was found to be illegal by the 3rd respondent. Accordingly, he set aside the order of the 2nd respondent. As a consequence of the order reversing the order of the 2nd respondent and thereby cancelling the refund order of the 2nd respondent, the 3rd respondent directed the appellant to recredit the entire amount received by him by way of refund. The argument is that the appellate authority cannot by himself direct the recrediting of the amount refunded to the appellant, but he could have left it open to the original authority to invoke Section 11A by issuing necessary notice. We are of the opinion that this would have been an unnecessary exercise. Where several remedies are open to the authorities and one remedy is resorted to, it cannot be said the same is illegal so long as the provision of law permits the same. Having held that the order of refund was illegal, which is not questioned before us, it is totally improper to say that the amount received by the appellant should not be recredited to the department. It cannot be forgotten that a provision of law has to be interpreted in a manner which will sub-serve the maintenance of justice. We cannot be persuaded to interpret the provision of law in such a manner and in the sense that the amount erroneously refunded to the appellant should remain with him. It is the natural consequence of the order of the appellate authority that the amount erroneously refunded should be re-credited to the department. We do not find any substance in the argument of the appellant that without the original authority invoking Section 11A, the direction to recredit the amount cannot be upheld. Consequently, the view taken by the learned single Judge is approved and the writ appeal is dismissed. No costs. In view of the disposal of the writ appeal, C.M.P. No. 9662 of 1992 also is dismissed.