(1990) 09 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No''s. 9832 of 1989 and 578/90

Sri Bharathi Mills and Another APPELLANT

Vs

Assistant Collector of Central Excise RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 226, 265

Citation : (1991) 34 ECC 156

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Judgement

Bakthavatsalam, J.—The prayer in W.P.No. 9832 of 1989 is as follows:

ï¿½to issue a writ in the nature of a writ of mandamus directing the respondent to refund to the petitioner the amount of Rs. 10,081-03 covered by

order-in-original R.C. No. 90/88 dated 6.4.1989 together with the interest at the rate of 18% per annum from the date of collection till the date of

refund....

2. The prayer in W.P.No. 578 of 1990 is as follows:

ï¿½to issue a writ in the nature of the writ of mandamus directing the respondent to refund to the petitioner the amount of Rs. 14,389.00 covered

by order-in-original R.C.29/89 dated 20.7.89 together with the interest at the rate of 18% p: a., from the date of collection till the date of refund

and pass....

3. In both these petitions, the petitioners paid the duty under mistake of law and have sought for'' refund. The authority, the respondent herein,

rejected the applications on the ground that they are time-barred u/s 11(B) of the Central Excise & Salt Act. Hence the petitioners are before me.

4. Notice of motion has been ordered by me in W.P. 9832 of 1989 on 25.7.1989 and in W.P. 578 of 1990 notice of motion has been ordered by

S. Ramaliugam, J. on 18.1.1990. No counter-affidavit was filed on behalf of the respondent.

5. Considering the facts and circumstances of these cases, I do not think that a counter-affidavit is necessary in these cases. A Division Bench of

this Court in Asst. Collector of Customs v. Premraj 1979 ELT. 1630 (sic) has held that duty paid without taking into account the exemption

application [notification?] has got to be refunded. The Division Bench has taken the view that in view of Article 265 of the constitution the

respondent should refund the duty paid as mistake. The Supreme Court in Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes,

Nowgong and Others, has held that the tax paid under mistake of law can be ordered to be refunded under Article 226 of the Constitution. A

reading of the impugned orders clearly show that the refund has been rejected only on the ground that is was time-barred. Taking into

consideration the judgments of the Division Bench of this Court and also of the Supreme Court, cited supra, a writ has to issue for refund as

prayed for. Hence these writ petitions are allowed. However, there will be no order as to costs.

6. These petitions hearing been passed this day, for being mentioned on the presence of Mr. Krishnaswami for M/s. S. Ramasubramaniam, and

Associates, Advocates for the petitioner, and of Mr. P. Narasimhan, Senior Central Government Standing counsel on behalf of the respondents,

the court made the following order:

7. For being mentioned, this writ petition has come up before this Court to-day and it is ordered as follows:

In para 4 of my order dated 30.8.1990, the words ''no counter-affidavit was filed on behalf of the respondent'' be deleted.