(1994) 09 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 135 (Tax) of 1991

Straw Board Manufacturing Co. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35

Citation : (1995) 75 ELT 476

Hon'ble Judges : S.R. Singh, J;G.S.N. Tripathi, J

Bench : Division Bench

Advocate : Janardan Sahai, for the Appellant; Vikram Gulati, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. The writ petition initially filed on 5-2-1991 was for issuance of writ of mandamus directing the respondents to refund the excise duty paid by the petitioner under protest during the period from 3-7-1971 to 28-2-1986. It also claimed for interest at the rate of 18% on the amount of duty liable to be refunded. It is not disputed that the petitioner has applied for refund of excise duty pursuant to the order dated 17-10-1989 of Custom Excise Gold (Control) Appellate Tribunal, New Delhi passed in Appeal No. E/1238/85-C. The application for refund was rejected vide order dated 9-11-1990, a copy of which has been annexed to the supplementary affidavit dated 19-4-1991. The said order was communicated to the petitioner vide covering letter dated 7-2-1991 and it was in fact received by them on 11-2-1991. This order has been brought on record by means of an application dated Nil filed on 29-4-1991 along with supplementary affidavit dated 19-4-1991 and amendment application has been filed today seeking relief for issuance of a writ of certiorari quashing the order dated 9-11-1990/7-2-1991 passed by the Assistant Collector, Central Excise, Saharanpur refusing to refund the claim made by the petitioner. Shri Vikram Gulati, learned counsel appearing for the respondents urged that the petitioner

has an alterative remedy by way of appeal u/s 35 of the Central Excises and Salt Act, 1944 and it was urged by him that since the Collector (Appeals) has wide power, the petitioner may be relegated to the remedy of appeal. It was also urged by the learned counsel for the respondents that the petitioner failed to furnish requisite informations sought for by the Assistant Collector, Central Excise, Saharanpur and the application for refund was rightly rejected in absence of requisite informations being supplied to the Assistant Collector, Central Excise, Saharanpur by the petitioner. Shri Janardan Sahai, learned counsel appearing for the petitioners urged that the petitioners were denied opportunity of producing documents and material to justify their claim for refund. It was also submitted by the learned counsel for the petitioner that the Assistant Collector, Central Excise, Saharanpur has failed to consider the effect of the order passed by Tribunal as also the statement of claim copy P.L.A. and T.R.6 and other documents filed by them in support of their claim for refund. It is also urged that the order dated 9-11-1990 is antidated.

3. Having heard the learned counsel for the parties, we are not inclined to dismiss the writ petition on the ground of alternative remedy being available by way of appeal u/s 35 of the Central Excises and Salt Act, 1944. The claim for refund has been rejected by the Assistant Collector, Central Excise, Saharanpur basically on the ground that calculations given by the petitioner in their application for refund were not supported with documentary evidence. The facts and circumstances of the case indicate that the petitioners were not given reasonable opportunity of producing relevant documents in original in support of their claim for refund. The ends of justice requires that the petitioners may be afforded an opportunity to adduce documents in support of their claim for refund. It cannot be gainsaid that pursuant to the order passed by Tribunal the petitioners became entitled to consequential reliefs including the relief of refund unless this right is taken away by any statutory amendment. We are not expressing any opinion either way inasmuch as we feel that the questions involved in this case require decision after affording opportunity to the parties at the level of Assistant Collector, Central Excise, Saharanpur. It may be observed that no injustice would be caused to the respondents if the matter is remitted back to the Assistant Collector, Central Excise for deciding the refund application afresh in accordance with law after affording opportunity of hearing to the parties, whereas the petitioners may suffer irreversible injury in the event of denial of opportunity to them to substantiate their claim.

4. In the result the petition succeeds and is allowed. The order dated 9-11-1990 communicated to the petitioner vide covering letter dated 7-2-1991 received by them on 11-2-1991 is hereby quashed. The Assistant Collector, Central Excise, Saharanpur is directed to re-admit the application for refund to its original number and dispose it of in accordance with law and in the light of the observations made in the body of this judgment, within a period of two months from the date of receipt of certified copy of this judgment. The petitioner is directed to furnish a certified copy of this judgment and the documents they

want to rely upon before the Assistant Collector, Central Excise, Saharanpur within a month from today.

5. Let a certified copy of this judgment is supplied to the petitioner on payment of usual charges within a week.

