
(1985) 11 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous writ Petition No. 920 of 1985

Swadeshi Polytex Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise, Division III and Others

RESPONDENT

Date of Decision : 20-11-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 2

Citation : (1986) 9 ECC 185 : (1986) 26 ELT 701

Hon'ble Judges : Om Prakash, J;A. Banerji, J

Bench : Division Bench

Judgement

1. The short question for consideration in this writ petition is whether the respondent No. 1, Assistant Collector of Central Excise, Division III, Ghaziabad is entitled to debit the account of the petitioner to the extent of a sum of Rs. 3,83,836.80 out of the amount due to the petitioner by way of refund even after the demand was set aside by the appellate order of the Collector of Central Excise (Appeals), New Delhi dated 24-9-1985 and further on the basis of a show cause notice issued by respondent No. 1 dated 14-10-1985.

2. We have heard learned counsel for the petitioner as well as Mr. Ravi, S. Dhavan, Senior Standing Counsel for the Union of India, on behalf of respondents. Since the petition raises a pure question of law and does not involve any disputed question of fact we proceed to decide this writ petition at the admission stage by the consent of parties in accordance with the provisions of chapter XXII, Rule 2 of the Rules of the Court.

3. Briefly stated, the relevant facts are as follows :

The petitioner is a public limited company having its registered office at Kavi Nagar, Ghaziabad. It manufactures polyester staple fibre at its factory in Ghaziabad. During the course of manufacture of the aforesaid fibre there is a By-product known as methanol. The petitioner sells the methanol in the market. Since an ad valorem excise duty was levied on methanol with effect from 17th

March, 1985, the petitioner had to submit the price of methanol for approval to respondent No. 1. A price list dated 19th March, 1985 showing the price of methanol at Rs. 3050 per metric tonne was submitted. The price list was approved on 18th July, 1985. In August, 1985 the respondent No. 1 sent a communication to the petitioner that the price of methanol quoted by Rashtriya Chemicals & Fertilizer Limited, Bombay was shown at Rs. 5941 per m.t. in road tankers and Rs. 6441 per m.t. in customers' own barrels and hence the price of methanol for the petitioner was approved for the aforesaid rates. The respondent No. 2, Superintendent of Central Excise, Range I, Division III, Ghaziabad gave a notice to the petitioner on 21st August, 1985 calling upon the petitioner to debit the differential duty of Rs. 3,83,836.80 in the personal ledger account within a week. The petitioner filed an appeal before the respondent No. 3 Collector of Customs and Central Excise (Appeals), New Delhi. The respondent No. 3 allowed the appeal by an order dated the 24th September, 1985 and set aside the order dated the 19th August, 1985 passed by the respondent No. 1 and remanded the case to the latter for a de novo decision after complying with the principles of natural justice.

4. The petitioner's case is that although the order dated 19th August, 1985 passed by the respondent No. 1 had been set aside by the Collector (Appeals) in appeal the respondent No. 1 by his order dated 3-10-1985 adjusted the a sum of Rs. 3,83,836.80 from out of the refund claim of Rs. 47,79,977.80 due to the petitioner. The petitioner had thereafter prayed to the respondent No. 1 to refund the aforesaid sum by crediting the same in the personal ledger account of the petitioner. The amount was not refunded and on the contrary the respondent No. 1 issued a show cause notice dated the 14th October, 1985 calling upon the petitioner to show cause as to why the price of methanol be not fixed at the rate of Rs. 5941 per m.t. in road tankers and Rs. 6441 per m.t. in customers' own barrels and the sum of Rs. 3,83,836.80 being the differential duty on the methanol be not recovered. The petitioner had thereafter made another request for the refund of the aforesaid amount in pursuance of the order of the Collector (Appeals) and had also asked for some further time to file a reply. The petitioner's grievance is at the Collector (Appeals) having allowed the appeal and set aside the impugned order, the amount of Rs. 3,83,836.80 could not be debited in the personal ledger account of the petitioner with the Collector of Central Excise and the non-refunding of the said amount is contrary to law and causing irreparable harm to the petitioner.

5. The matter lies in a very narrow compass. The demand was made by the respondent No. 1. That demand was set aside by the Collector (Appeals) in appeal and the case remanded to the respondent No. 1 for a de novo decision after complying with the requirements of the principles of natural justice. The matter is pending there. Meanwhile out of certain sums of money, which became due to the petitioner, a sum of Rs. 3,83,836.80 was debited towards the above demand. It is well settled that once the order of demand was set aside in appeal, the position of the parties was restored status quo ante. The same was not done.

On the contrary, a notice had been issued asking the petitioner to show cause as to why the price of methanol be not fixed at a certain figure and why the aforesaid amount of Rs. 3,83,836.80 be not adjusted/appropriated out of the amount due to the petitioner by way of refund. The mere giving of a show cause notice does not create a demand. A demand may come into existence after the show cause notice has been adjudicated upon. That stage has so far not been reached. As a matter of fact, the order of demand passed by the respondent No. 1 having been set aside and the matter remaining pending with him for a de novo decision it was not open to the respondent No. 1 not to refund the aforesaid amount to the petitioner.

6. In the present case, the order of the refund would not result in actual paying of any amount to the petitioner but only crediting the said amount in the personal ledger account of the petitioners that the same is available for the payment of excise duty on some future date whenever a fresh demand is created it may be realised from the petitioner. We are of the view that after the Collector (Appeals) had allowed the appeal and set aside the original order of the demand, the respondent No. 1 had no authority to debit the said amount to the personal ledger account of the petitioner. We are further of the view that a direction should be issued to the respondent No. 1 to credit the amount of Rs. 3,83,836.80 in the personal ledger account" of the petitioner forthwith.

7. In regard to the prayer for quashing of the show cause notice dated 14-10-1985 issued by the respondent No. 1 we see no justification for granting this prayer. The show cause notice has been issued, which has to be replied to and decided in accordance with law. It goes without saying that even in this proceeding if the petitioner asks for a hearing, the petitioner must be afforded an opportunity to do so. We would, therefore, observe that the proceedings upon the show cause notice may continue along with the proceedings that are pending upon remand before respondent No. 1 upon remand from the Collector (Appeals).

8. In view of the above, the writ petition is partly allowed. A direction is issued to the respondent No. 1 to forthwith refund the sum of Rs. 3,83,836.80 by crediting the same in the personal ledger account of the petitioner with the respondents. The reliefs for quashing of the show cause notice dated 14-10-1985 and restraining the respondents from proceedings upon that notice are both refused. In view of the facts and circumstances of this case the parties are left to bear their own costs.