
(1989) 06 KAR CK 0008

In the Karnataka High Court

Case No : Writ Appeal No's. 920 and 921 of 1989

The Assistant Collector of Central Excise and Another

APPELLANT

Vs

Kashyap Engineering and Metallurgicals (P) Ltd.

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 119

Citation : (1989) 24 ECC 422

Hon'ble Judges : M. Ramakrishna, J;M. Rama Jois, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Rama Jois, J.—These appeals are presented by the Assistant Collector of Central Excise and Union of India against the order of the learned Single Judge allowing the Writ Petitions presented by the respondent herein.

2. The facts of the case, in brief, are as follow:

The respondent-company (writ petitioner) is a manufacturer of copper and copper alloy castings. For the period commencing from 1-3-1975 upto 26-12-1980 the respondent had paid excise duty amounting to a sum of Rs. 3,64,961. On 12-4-1979 the Company was informed by its customer, that, there was a notification in force issued by the Central Government, according to which there was an exemption from payment of excise duty on copper and copper alloy castings. On 20th of April, 1979 the respondent addressed a letter to the Superintendent of Central Excise, seeking clarification regarding exemption of copper and copper alloy castings. The Superintendent of Central Excise in his letter dated 28-11-1979 confirmed" that the product was exempt from payment of excise duty under notification No. 119/66-CE dated 16-7-1966. Thereafter the respondent made two refund claim applications on 27-9-1980 and 29-12-1980. These applications were kept pending for nearly four years and they were rejected on 31-8-1984. Immediately thereafter the respondent presented writ

petitions, on 29-10-1984. In the writ petitions, the respondent claimed that the excise duty had been paid by the respondent though it was not liable to pay and therefore there was no justification for declining to grant refund of the excise duty so paid. The respondent also relied on a circular said to have been issued by the Central Board of Excise and Customs on 8-5-1973 in exercise of its power under Rule 233 of the Central Excise Rules in which the Central Board stated that in cases of applications for refund of the excise duty paid by mistake refund may be granted if application was made within the expiry of limitation for filing of suits for recovery of excise duty paid by mistake. There was no dispute that according to Rule 11 of the Central Excise Rules, as stood at the relevant point of time the period of limitation fixed for claiming the refund was six months and the application of the respondent was made after the expiry of six months and it was also not disputed that it was made within 3 years from 12-4-1979, the date on which the mistake came to be known to the respondent.

3. The learned Judge held that though the application was made beyond the period of six months prescribed under Rule 11 of the Rules, as the application was made within 3 years from the date on which the mistake was discovered by the respondent, the refund should be ordered. Accordingly, the writ petitions were allowed. Aggrieved by the said order of the learned single Judge, the appellants who were respondents in the writ petitions have filed this appeal.

4. Sri Ashok Haranahally, learned Central Government Standing Counsel, contended that Rule 233 of the Central Excise Rules did not authorise the Central Board of Excise and Customs to give any directions contrary to any of the Rules and therefore the circular in question which was contrary to Rule 11 of the Rules was not binding on the authorities and was unenforceable. The learned Counsel submitted that the decision of the Supreme Courts in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and other decisions of the Supreme Court holding that Circulars issued by the Central Boards of Direct Taxes was binding on all the subordinate revenue authorities was not apposite to this case for the reason that the Central Board of Excise (sic) was given the power to issue instruction by Section 119 of the I.T. Act which provides that the instructions issued by the board shall be binding on all the subordinate authorities, but in the present case, Rule 233 of the Central Excise Rules only authorised the Central Board of Excise and Customs to issue instructions providing for any supplemental matters arising out of the rules. The learned Counsel maintained that the Board could only supplement but could not supplant the express provision of the rules and as in the present case the instructions issued were contrary to Rule 11 of the rules it was unenforceable.

5. We see considerable force in the contention of the learned Counsel. But even so we find no justification to interfere with the order of the learned single Judge for the following reasons: Admittedly copper and copper alloy castings were exempt from payment of excise duty by virtue of the notification date 16th July, 1966. The respondent who was unaware of the said Notification paid the excise

duty from 1-3-1975 onwards. It is only on 12.4.1979 the appellant came to know that the products in question were exempt from excise duty and therefore there was no liability on the part of the respondent to pay the excise duty. It is thereafter the two applications for refund were made on 27.9.1980 and 29.12.1980. On 31.8.1984 the refund applications were rejected insofar as it related to the period prior to six months as barred by limitation. Thereafter, the writ petitions were presented. Even on the basis that the circular issued by the Central Board of Excise could not be enforced, it is clear that this Court, in exercise of its power under Article 226 of the Constitution can issue a writ of mandamus directing the Governmental Authorities to refund tax or excise duty collected or paid without liability in law. Therefore, the order of the learned Single Judge directing the refund of the amount, has to be sustained on the ground that though the excise duty had been paid by mistake its refund was refused. The learned Counsel for the appellants strenuously contended that the time for filing a suit was over by the time the writ petitions were presented before this Court and therefore this Court should decline to direct the refund of the excise duty and the writ petitions were liable to be dismissed on the ground of delay and laches on the part of the respondents in filing the writ petitions.

6. The above contention in our opinion is untenable. Firstly whether this Court should exercise its power under Article 226 of the Constitution of India in a given case even if the period of limitation for a suit was over or not is a matter of discretion and not a matter of want of jurisdiction. Therefore, the real question for consideration would be, whether the respondent was guilty of such delay and laches in presenting the petitions as would justify the dismissal of the petitions in limine. The contention of the appellant is that there has been inordinate delay on the part of the respondent and therefore the writ petitions were liable to be dismissed in limine. But the difficulty to accept this submission is that the respondent believed that in view of the circular dated 8-5-1973 issued by the Central Board of Excise and Customs, they were entitled to make an application for refund within the time fixed for suit, i.e., within a period of three years from the date on which the mistake came to be known. In fact, the applications for refund were made on 27-9-1980 and 29-12-1980 i.e., within three years from 12-4-1979 the date of discovery of the mistake. But for the circular issued on 8-5-1973 the respondent would have filed suits, instead of making applications for refund to the authorities. The Central Board of Excise which issued a circular dated 8-5-1973 enabling the persons to apply for refund within a period of 3 years from the date of discovery of mistake cannot with any justification reject the application made within three years and then take the stand that the respondent had filed the writ petitions after the time fixed for suit and therefore the writ petitions should be dismissed on the ground of delay and laches. It is the circular dated 8-5-1973 which misled the respondent to file refund applications and further it is the respondent (sic) who kept the applications for over three years and rejected on 31-8-1984. It is the conduct of the 1st appellant which was responsible for the delay in presenting the writ petitions and not of the

respondent. Hence, the plea of this appellant must fail.

7. For the aforesaid reasons, we find no ground to interfere with the order of the learned Single Judge.

8. In the result, we make the following order:

We uphold the order of the learned Single Judge and dismiss the appeals.