(2004) 09 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 7949 of 1991

Triveni Chemicals Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) 210 ELT 667 : (2007) 5 STR 401

Hon'ble Judges : Sharad D. Dave, J;B.J. Shethna, J

Bench : Division Bench

Advocate : S.N. Soparkar, for the Appellant; Jitendra Malkan, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner Triveni Chemicals Ltd. has filed this petition under Article 226 of the Constitution before this Court on 25-10-1991 praying that the respondents be directed to pay Rs. 18,52,175. 20 ps. with interest at the rate of 18% p.a. to the petitioner from the date of payment made by the petitioner till the date of refund.

2. It appears from the order sheet of this petition that when this petition was placed for admission on 28-10-1991 before the Division Bench of this Court, straightway Rule was ordered to be issued making it returnable on 25-11-1991 and the Notice as to interim relief was also ordered to be issued. By way of interim relief, it was prayed that pending hearing and final disposal of this petition the respondents be directed to pay Rs. 18,52,175.25 ps. to the petitioner. However, for some or the other reasons this petition could not be heard and finally disposed of till today. Today, this matter was listed for the 14th time and after a period of almost 13 years of passing of the order of admission, this matter is heard and disposed of today by this order.

3. The Collector of Customs and Central Excise (Appeals), Bombay by his impugned order dated 7-9-1989 allowed the Appeal of the petitioner (Annexure :

G). In the view of this order the petitioner approached the Assistant Collector, Central Excise, Vapi by letter dated 21-9-1989 (Annexure : H) claiming refund of duty of Rs. 18,52,175.25 ps. at an early date. However, there was no response to it from the other side, therefore, after waiting for a period of almost wo years the petitioner sent reminder dated 11-7-1991 (Annexure : I). This time the respondent No. 2. Assistant Collector, Vapi responded the petitioner by letter dated 16-8-1991 (Annexure : J) and informed the petitioner either to personally remain present or through its representative before him on 26-8-1991.

4. It is the case of the petitioner that on 26-8-1991 its representative appeared before the respondent No. 2 requested him to issue refund order, but the respondent No. 2 indicated to its representative that granting of refund would result into unjust enrichment. There upon, the petitioner pointed out to the respondent No. 2 that question of unjust enrichment does not arise in this case and that the petitioner had paid the duty under protest and, in any case, the respondent No. 2 can not deny refund to the petitioner in view of the judgment of the Hon''ble Bombay High Court whereby the contention of unjust enrichment was specifically rejected. Thereafter, no decision was taken by the respondent No. 2. Therefore, the petitioner has filed this petition before this Court on 25-10-1991 i.e. within a period of 2 month from the date of hearing which took place before the respondent No. 2 on its refund Application.

5. Learned Senior Advocate Shri Soparkar for the petitioner submitted that once the Collector allowed his Appeal by order dated 7-9-1989 (Annexure :G) then the respondent No. 2 Assistant Collector, who was subordinate to the Collector, was bound to grant his refund Application and though the petitioner approached the respondent No. 2 twice on 21-9-1989 for the first time by way of Application (Annexure : H) and then 2nd time on 6-8-1991 (Annexure : J) the respondent No. 2 for the first time called upon the petitioner or its representative to remain personally present before him on 26-8-1991, by letter dated 6-8-1991 (Annexure : I) and at the time of oral hearing it was told to the representative of the petitioner that it was a case of unjust enrichment, therefore, the petitioner would not be entitled to any refund. He submitted that when the Collector has passed an order in his favour by allowing the Appeal of the petitioner then the present petition should be accepted and the respondents be directed to refund the amount of Rs. 18,52,175.25 ps. more particularly when the averments made in the petition on oath remained uncontroverted, as no reply Affidavit is filed in the petition so far though there was ample opportunity to file their reply.

6. It may be stated that the Collector allowed the Appeal of the petitioner by order dated 7-9-1989 (Annexure : G) and within a period of fortnight i.e. on 21-9-1989, the petitioner has immediately applied for refund before the Assistant Collector, but thereafter slept over the matter for a period of almost 2 years and after a period of 2 years the petitioner has sent reminder (Annexure : J).

7. Repeated representations or reminders would not furnish cause of action as

held by the Hon''ble Supreme Court in the case of State of Haryana and Others Vs. Miss Ajay Walia, It is a different matter that the respondent No. 2 by his letter dated 6-8-1991 (Annexure : J) called upon the petitioner either to remain personally present or through its representative on 6-8-1991. However, we are really surprised that inspite of such show cause notice hearing which took place on 26-8-1991 no order in the matter was passed by the respondent No. 2 for a period of almost 2 months and, therefore, the petitioner was obliged to approach this Court by way of this petition in the month of October, 1991.

8. It is true that in Para : 2.6 of this petition, at page : 6, the averments made on oath that.... "On the said date (26-8-1991) the petitioner''s representative appeared before the second respondent and requested him to issue refund order. The second respondent indicated that granting of refund would result into unjust enrichment. The petitioner thereupon pointed out that firstly in the facts of the case issue of unjust enrichment does not arise; secondly payment of duty was made by the petitioner only under protest and thirdly at any rate, said ground was not available to the respondents inasmuch as the Hon''ble Bombay High Court rejected the contention of the respondents as regards unjust enrichment and the said decision was accepted by the respondents. Inspite of this the second respondents has done nothing in the matter".

However, it may be stated that the name of the representative, who stated to have remained present before the Assistant Collector on 26-8-1991 has not been given. When this was pointed out to Shri Soparkar, he prayed for time to make the things clear by way of Affidavit giving the name of the person who remained present as representative of the petitioner on 6-8-1991.

However, the said request was refused for the two reasons viz. (i) that after filing of petition almost 13 years period has passed by now, and (ii) though this petition is dated 25-10-1991. Affidavit is filed on a separate page on 18-10-1991 i.e. prior to the date of the petition. On this short ground alone the petition was required to be dismissed. At this stage Shri Soparkar submitted that after Affidavit was made on 18-10-1991 this petition was filed before this Court on 25-10-1991. We are surprised with this submission because the petition bears hand written date of 25th, still the Affidavit was filed by its Director in the petition on 18-10-1991.

9. In view of the above learned Standing Counsel Shri Malkan for the respondents was very much right in submitting that the respondents were not required to the file any reply to such type of petition. He has rightly submitted that at first instance there was gross delay of about 2 years in approaching this Court by way of petition for the claim of their refund and no one had remained present on 26-8-1991, therefore, the respondent No. 2 has not passed any order on the refund Application of the petitioner. He submitted that in absence of any written order passed by the respondent No. 2, this Court should not entertain this petition. There is a lot of substance in this submission. If the respondent No. 2 had at all conveyed orally to the representative of the petitioner on 26-8-1991

that the petitioner was not entitled for any refund on the ground of unjust enrichment then the petitioner could have requested the respondent No. 2 in writing to pass such order in writing. But, nothing is done and it seems that because of the delay of 2 years after sending reminder to the respondent No. 2 for refund, the petitioner approached this Court in October, 1991 by the way of this petition taking advantage of the letter dated 6-8-1991 issued by the respondent No. 2.

In view of the above discussion this petition fails and is dismissed. Rule is discharged. However, there shall be no order as to costs.

