(1994) 03 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 2388 of 1984

T.T. Blades — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 11-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 57 ECC 178 : (1994) 52 ECR 362 : (1994) 71 ELT 911

Hon'ble Judges : P.S. Patankar, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Mr. Prashant Sawant, instructed by R.M. Azim, for the Appellant; Mr. H.V. Mehta and Mr. L.S. Vyas, for the Respondent

Judgement

Pendse, J.—The controversy in this petition lies in a narrow compass. The petitioners filed an application for refund of duty alleged to be paid in excess, in respect of manufacture of the goods covered under Tariff Item No. 68. The Assistant Collector rejected the claim. The petitioners preferred appeal before the Appellate Collector and appeal was decided in favour of the petitioners. The order passed by the Appellate Authority was challenged by the Department by filing appeal before the CEGAT.

2. During the pendency of the appeal before the CEGAT, the petitioners filed the present petition under Article 226 of the Constitution claiming a direction to the Department to deposit amount of refund ascertained by the appellate authority in this Court. The petitioners also claimed that on deposit the amount shall be paid over to the petitioners. The learned Single Judge while admitting the petition on December 19, 1984 directed the Department to deposit a sum of Rs. 2,59,814/- in this Court and further directed the petitioners to withdraw the same on undertaking, that in the event of the respondents succeeding in the appeal before the CEGAT, the petitioners will return the amount alongwith such interest as may be determined by the appellate Court.

3. The appeal preferred by the Department before the CEGAT succeeded and

order of refund was set aside, but the proceedings were remitted back to the Assistant Collector for fresh disposal. After remand, the Assistant Collector dismissed the claim for refund by order dated January 17, 1989.

4. Mr. Mehta, learned counsel appearing on behalf of the respondents, submitted that in view of the disposal of the refund claim by the Asstt. Collector on January 17, 1989 the Department is entitled to restitution of the amount paid under the order which was set aside. The submission is correct and deserves acceptance. In accordance with the interim order passed by the learned Single Judge dated December 19, 1984 the petitioners are bound to refund the amount of Rs. 2,59,814/- to the Department. Mr. Mehta submits that the amount should be returned alongwith interest as directed by the interim order. In our judgment, the petitioners should return the amount alongwith interest at the rate of 12% per annum payable from January 17, 1989 till the date of repayment. Mr. Sawant, learned counsel appearing for the petitioners, seeks six weeks'' time to refund the amount with interest. Accordingly, time is granted.

5. Accordingly, petition fails and rule is discharged with costs. The petitioners are directed, in accordance with the undertaking given, to refund the amount of Rs. 2,59,814/- with interest at the rate of 12% per annum payable from January 17, 1989 till the date of repayment. Repayment to be made within six weeks from today.