

(2016) 03 GAU CK 0084
In the Gauhati High Court
Case No : Review Pet. No. 121 of 2014

Union of India and others

APPELLANT

Vs

Amalgamated Plantations Pvt. Ltd.

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Citation : (2016) 340 ELT 310 : (2016) 4 GauLJ 92 : (2016) 5 GauLR 403 :
(2016) 2 GauLT 709

Hon'ble Judges : T. Vaiphei;Ujjal Bhuyan, JJ.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J. - This petition has been filed by the Union of India and three others for review of judgment and order dated 08-11-2012 passed by this Court in WP(C) No. 1166/2012.

2. WP(C) No. 1166/2012 was filed by the respondent as the writ petitioner. The said writ petition was heard along-with another writ petition being WP(C) No. 2325/2012.

3. Question for consideration before the writ Court was the entitlement of the writ petitioner to interest under Section 11BB of the Central Excise Act, 1944 on the delayed excise duty refund by the department to the writ petitioner.

4. Writ petitioner (petitioner, hereinafter) is a company incorporated under the Companies Act, 1956, owning amongst others the Chabua Tea Estate in the district of Dibrugarh, Assam. Petitioner is engaged in the business of cultivation and manufacture of tea and tea waste, which are exigible to excise duty under Chapter 9 of the Schedule to the Central Excise Tariff Act, 1985, having central excise registration number.

5. The Central Government formulated new industrial policy in the year 1997 giving various incentives to stimulate industrial development in the North Eastern

Region. Such incentives included exemption from payment of excise duty for a period of 10 years from commencement of production.

6. Pursuant thereto, Department of Revenue, Ministry of Finance, Government of India issued notification No. 33/99-CE dated 08-07-1999 giving concessions in excise duties. The said notification was issued in exercise of power conferred by Sub-section (1) of Section 5A of the Central Excise Act, 1944 read-with Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Section 3(3) of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978. By the said notification, the goods specified in the schedule and cleared from a unit located in any one of the States in the North Eastern Region, including in the State of Assam, were exempted from excise duty leviable thereon.

7. Petitioner filed a claim on 18-10-2004 before the Assistant Commissioner of Central Excise, Dibrugarh for refund of excise duty paid for the period from 08-07-1999 to 28-02-2003 amounting to Rs.1,10,61,418.00. The claim was made in terms of the aforesaid notification dated 08-07-1999, as amended.

8. Assistant Commissioner of Central Excise, Dibrugarh vide order dated 10-05-2005 held that the petitioner was eligible for exemption under notification dated 08-07-1999. Thereafter, the said authority vide order dated 05-08-2005 sanctioned refund of Rs. 77,52,409.00 in favour of the petitioner out of the claimed amount of Rs.1,10,61,418.00. It was stated that the refund claim for the months of August, 1999, September, 1999, May, 2000, September, 2000, November, 2001 and December, 2001 involved amounts of over Rs. 5 lakhs, which required audit clearance. Thus, an amount of Rs.33,09,009.00 (Rs. 1,10,61,418.00 - Rs. 77,52,409.00) was kept pending.

9. The sanctioned amount of Rs. 77,52,409.00 was refunded to the petitioner.

10. Commissioner of Central Excise, Dibrugarh preferred appeal against the aforesaid order dated 05-08-2005. The appellate authority i.e. Commissioner (Appeals), by order dated 31-01-2006 rejected the appeal and upheld the order dated 05-08-2005.

11. Revenue thereafter preferred second appeal before the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (CESTAT). However, CESTAT by order dated 21-06-2011 dismissed the appeal filed by the Revenue.

12. Against order of CESTAT, Revenue filed further appeal before this Court, which was registered as C.Ex. Appeal No. 5/2011. This Court by order dated 19-12-2011 dismissed the appeal holding that no substantial question of law arose in the appeal.

13. In spite of such orders of the appellate authorities rejecting the appeals filed by the Revenue, the balance amount of Rs.33,09,009.00 was not refunded to the petitioner. Petitioner, therefore, filed the related writ petition seeking a direction to the respondents (review petitioners herein) to refund the aforesaid amount to

the petitioner along with applicable interest.

14. Respondents contested the writ petition by filing counter affidavit. In the said counter affidavit, it was stated that refund claim of Rs. 33,09,009.00 was taken up for expeditious disposal. Ultimately, by order dated 27-03-2012 passed by the Assistant Commissioner, Dibrugarh, an amount of Rs. 32,05,103.00 was sanctioned for refund to the petitioner. The said amount was paid to the petitioner vide cheque dated 27-03-2012. On the claim of interest, respondents stated that nature of refund envisaged in the notification dated 08-07-1999 is qualitatively different from refund under section 11B of the Central Excise Act, 1944 as it was not on account of any excess payment of excise duty by the manufacturers but was designed to give effect to exemption. Consequently, it was contended that provision of Section 11B of the Central Excise Act, 1944 would not be applicable in such cases.

15. After due consideration, the writ Court upheld the contention of the writ petitioner and allowed the writ petition vide the judgment and order dated 08-11-2012. It was held that language of Section 11B is very clear and unambiguous. The Section does not distinguish or differentiate between any kind of excise duty refund, whether duty paid in excess or duty paid which are exempted. Relevant portion of the judgment and order dated 08-11-2012 reads as under :-

"25. Before we proceed further, relevant portion of the notification dated 08-07-1999 may be looked into. As has already been noticed earlier, the said notification has been issued amongst others in exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944. The exemption provided by the said notification is given effect to in the following manner -

(i) the manufacturer shall submit a statement of the duty paid to the jurisdictional central excise authority by the 7th day of the next month in which the duty has been paid,

(ii) the jurisdictional central excise authority, after verification, shall refund the amount of duty paid during the month under consideration to the manufacturer by the 15th day of the next month,

(iii) if there is likely to be any delay in the verification, the jurisdictional central excise authority shall refund the amount on provisional basis by the 15th day of the next month to the month under consideration and, thereafter, may adjust the amount of refund by such amount as may be necessary in the subsequent refunds.

26. Thus, it is quite clear the once it is held that a manufacturer is entitled to exemption of excise duty in terms of the notification dated 08-07-1999, the excise duty paid shall be refunded to the manufacturer as per the schedule mentioned in the said notification. Even in case of likely delay, refund has to be made on provisional basis. Therefore, there cannot be any manner of doubt that

the admissible excise duty refund cannot be withheld by the central excise authority.

27. Section 11B of the Central Excise Act, 1944 deals with claim for refund of duty. It provides that any person claiming refund of any duty of excise may make an application with relevant documents and evidence for refund of such duty to the Assistant Commissioner of Central Excise before the expiry of six months from the relevant date. Under sub-section (2) of section 11B, if on receipt of any such application, the Assistant Commissioner is satisfied that the whole or any part of the duty of excise paid by the applicant is refundable, he may make an order accordingly.

28. Under section 11BB of the Central Excise Act, 1944, if any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate which may be fixed by the Central Board of Excise and Customs on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

29. From a conjoint reading of section 11B and 11BB of the Central Excise Act, 1944, it is apparent that if any refund of excise duty is ordered under section 11B(2), the same has to be refunded within three months from the date of receipt of application under sub-section (1) of that section, failing which interest will have to be paid. Language of section 11B is very clear and unambiguous. It speaks of claiming refund of any (emphasis ours) duty of excise. No exception is provided. It does not distinguish or differentiate between any kind of excise duty refund, whether duty paid in excess or duty paid which are exempted. As pointed out by the Hon'ble Supreme Court in the case of *Ranbaxy Laboratories Ltd. v. Union of India* reported in (2011) 10 SCC 292, it is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment.

30. In the case of *Ranbaxy Laboratories Limited (supra)*, Hon'ble Supreme Court while examining the aforesaid two provisions, referred to a circular dated 01-10-2002 issued by the Central Board of Excise and Customs, New Delhi wherein and whereby the Board stressed that the provisions of section 11BB of the Central Excise Act, 1944 are attracted automatically for any refund (emphasis ours) sanctioned beyond a period of three months. Hon'ble Supreme Court has held that liability of the Revenue to pay interest under section 11BB commences from the date of expiry of three months from the date of receipt of application for refund under section 11B(1) and not on the expiry of the said period from the date on which the order of refund is made.

31. We also find that a Single Bench of this Court in (2004) 171 ELT 458 (*Hindustan Coca-Cola Beverages Pvt. Ltd. v. Union of India*) while directing

refund of excise duty paid in terms of notification dated 08-07-1999, had also directed payment of interest for delayed payment as per provision of section 11 of the Central Excise Act, 1944.

32. Thus, in view of the discussions made above, we are of the unhesitant view that section 11B of the Central Excise Act, 1944 does not exclude claim of refund made in terms of the notification dated 08-07-1999. Petitioners would, therefore, be entitled to interest under section 11BB of the Central Excise Act, 1944 on the excise duty refunded to them. The jurisdictional excise officers shall now determine the interest amount payable to the petitioners for the relevant periods. The amounts found due shall be paid to the petitioners within three months from today.

33. Writ petitions are allowed. However, looking to the facts and circumstances of the cases, there will be no order as to cost."

16. Review has been sought for on the ground that two Central Government circulars dated 19-12-2002 and 08-12-2006 have made it clear that provision of Section 11B of the Central Excise Act, 1944 would not be applicable in case of exemption notification dated 08-07-1999. On the basis of the above two circulars it is contended that writ petitioner would not be entitled to interest on the delayed refund of excise duty. Though this argument was advanced before the writ Court, yet the writ Court came to an erroneous finding. Therefore such finding is required to be reviewed.

17. On due consideration, we are unable to accept the contention advanced by the review petitioners. The circulars dated 19-12-2002 and 08-12-2006 are executive in character. It cannot over-ride statutory provisions such as Section 11B of the Central Excise Act, 1944 as interpreted by the Court. Moreover, all these aspects were gone into in detail by the writ Court while passing the judgment and order dated 08-11-2012. In the garb of review, it appears that review petitioners actually seek rehearing of the writ petition, which is not permissible.

18. No case for review is made out. Review petition is dismissed.