(2014) 03 RAJ CK 0113

In the Rajasthan High Court

Case No : Civil First Appeal No. 80 of 1986

Union of India APPELLANT

Vs

Rajasthan Spinning and Weaving Mills Ltd. RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 72
Limitation Act, 1963 — Section 17(1)(c)

Citation : (2014) 310 ELT 296

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : V.K. Mathur and D.K. Godara, Advocate for the Appellant; Ramit Mehta, Advocate for the Respondent

Judgement

Arun Bhansali, J.—This appeal is directed against the judgment and decree, dated 7-4-1986 passed by the Additional District Judge, Bhilwara, whereby the suit filed by the respondent-plaintiff for a sum of Rs. 10,55,607.17P, has been decreed along with interest @ 6% p.a. The facts in brief may be noticed thus: the plaintiff filed a suit on 16-3-1979 inter alia with the averments that the plaintiff Company was involved in the manufacture of blended yarn and started manufacturing the same in September, 1966 and on demand being made by the Deputy Superintendent, Central Excise under Central Excise Tariff Items No. 18 & 18A, the plaintiff started paying the excise duty w.e.f. 14-9-1966. The rate of excise duty kept on challenging from time to time. The Company continued payment of the duty till 15-3-1972 when in fact, no duty was payable on the blended yarn under Tariff Items No. 18 & 18A and the defendants were not entitled to recover the same. It was claimed that during the said period 14-9-1966 to 15-3-1972, the plaintiff paid excise duty to the tune of Rs. 10,55,607.17P. on account of mistake of law and the said mistake was discovered when on 3-4-1976, a judgment of Hon''ble Gujarat High Court, dated

15-1-1976 came to the notice of the officers of the Company wherein the levy under Tariff Items No. 18 & 18A was held to be bad.

2. On coming to know of the said judgment, the plaintiff applied before the Superintendent, Central Excise on 3-4-1976 for refund of the duties paid, however, without considering the plea raised by the Company and without giving any opportunity of hearing and without considering the judgment of the Gujarat High Court, the claim was rejected as time barred.

3. An appeal was filed before the Assistant Collector, Central Excise, Ajmer, which was also rejected on 31-1-1977 and therefore, on 12-1-1979, a notice under Section 80 CPC was issued and the suit was filed on 16-3-1979.

4. A written statement was filed by the defendant inter alia questioning the jurisdiction of the Court and taking a plea that the suit was barred by limitation.

5. The trial Court framed six issues and after hearing the parties, it came to the conclusion that in view of the judgment passed by the Gujarat High Court, the duty under Tariff Items No. 18 & 18A on blended yarn was not payable during the period 14-9-1966 to 15-3-1972; the plaintiff was entitled to benefit of Section 17(1)(c) of the Limitation Act, 1963 and the suit was within limitation; the Civil Court had jurisdiction to deal with the said issue; the notice under Section 80 CPC was appropriately given and ultimately, decreed the suit as noticed hereinbefore.

6. It is submitted by learned counsel for the appellants that the Trial Court was not justified in decreeing the suit. Besides the fact that the Civil Court had no jurisdiction to deal with the issue of refund, which is required to be dealt with under Rule 11 of the Central Excise Rules, 1944, the suit was ex facie barred by limitation and therefore, the judgment and decree passed by the Trial Court deserves to be set aside. Reliance was placed on a Constitution Bench judgment of the Hon''ble Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, .

7. Opposing the submissions, learned counsel for the respondent submitted that the Trial Court has thoroughly considered the issue of maintainability of the suit as well as the aspect of limitation and the findings does not call for any interference.

8. I have considered the rival submissions.

9. The Trial Court while dealing with the issue of limitation came to the conclusion that after the judgment was delivered by Gujarat High Court on 15-1-1976, when the said judgment came to the notice of the plaintiff in March, 1976, wherein the Gujarat High Court had ruled that the duty was not payable under Tariff Items No. 18 & 18A on blended yarn and as the suit was filed within three years from the date the said mistake came to the notice of the plaintiff, the suit was within limitation.

10. Further on the issue of maintainability of claim for refund by way of filing suit before the Civil Court, the Trial Court came to the conclusion that there is no provision in the Central Excise Act, 1944 barring jurisdiction of the Civil Court and therefore, the suit was maintainable.

11. The Hon''ble Supreme Court in the case of Mafatlal Industries Ltd. (supra) while dealing with almost identical aspect held and observed as under:-

"108. (iv) It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/Tribunal in another person''s case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without reopening such assessment/order on the ground of a decision in another person''s case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well-established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund."

12. The Hon''ble Court further went on to provide as under qua the pending litigations:-

"109. We take note of the fact that writ petitions/writ appeals/suits claiming refund of excise duties/customs duties may be pending as on today. They are liable to fail on the ground of maintainability by virtue of the law declared herein. Since the law is being declared and clarified by us now, we make the following directions: In cases where writ petitions, writ appeals (by whatever appellation they are called) or suits (at whatever stage they may be, as on today) are pending as on today, and provided they have not already taken proceedings for refund under the Act, it shall be open to the petitioners/appellants/plaintiffs to file applications for refund under Section 11B within sixty days from today. If the applications are so filed by them, they shall not be rejected on the ground of limitation and shall be dealt with according to law. We make it clear that this direction applies only to petitioners/appellants/plaintiffs in pending writ petitions/ writ appeals/suits (pending as on today), as explained hereinabove, and not to any others. The applications so filed, under Section 1113 shall be disposed of under Section 11B, as interpreted herein, and in accordance with law. It is obvious that if any of such petitioners/appellants/plaintiffs have already taken proceedings for refund under the Act and having failed therein - either partly or wholly - have resorted to writ petition or suit, they shall not be entitled to the benefit of this direction."

13. From the above, it is apparent that the Hon''ble Court has laid down that the suit cannot be instituted for refund of claim based on discovery of mistake of law and Section 72 of the Contract Act, 1872 and provisions of Section 17(1)(c) of the Limitation Act has no application in such a claim for refund.

14. Further while dealing with the pending litigations, the Hon''ble Court provided for time to make such application seeking refund, however, it further ruled that if proceedings have already been taken for refund and the parties have failed, they would not be entitled to the benefit of the said direction.

15. In view of the law laid down by the Constitution Bench, the suit filed by the plaintiff seeking refund of excise duty paid on blended yarn for a period 14-9-1966 to 15-3-1972 was not maintainable before the Civil Court and was clearly barred by limitation. As admittedly, the plaintiff had approached the Superintendent, Central Excise by way of application seeking refund and the Collector (Appeals) by way of appeal against the rejection of its application seeking refund and had failed, the relief as granted by the Hon''ble Supreme Court in para 109 (supra) also cannot be granted to the plaintiff and the suit filed by the plaintiff is liable to be dismissed. In view of the above discussion, the appeal filed by the appellants is allowed with costs. The judgment and decree dated 7-4-1986 passed by the Trial Court is set aside. The suit filed by the plaintiff is dismissed.

