(1998) 12 MP CK 0012

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 124/97

Union of India (UOI) APPELLANT

Vs

Grasim Industries Ltd. RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Central Excise Rules, 1944 — Rule 11B, 57, 57A
Central Excises and Salt Act, 1944 — Section 11B, 35

Citation : (1999) ECR 227 : (2000) 116 ELT 28

Hon'ble Judges : Shambhoo Singh, J;B.A. Khan, J

Bench : Division Bench

Advocate : B.G. Neema, for the Appellant; J.P. Gupta and S.S. Pawar, for the Respondent

Judgement

B.A. Khan, J.—Respondent No. 1 is a public limited company engaged amongst other things in manufacture of caustic soda for which it uses titanium anodes as an input. It claimed Modvat credit for Excise duty paid by it on purchase of titanium from 23-8-1986 to 29-4-1989 and refund of Rs. 43,96,116.42 on this count. The case set up was that though it had received such benefit earlier also up to 28-2-1982 pursuant to Notification No. 201/79 but it had somehow omitted to stake the claim for the period in question under the mistaken impression that metal anodes were not inputs within the terms of Rule 57A. But now that CEGAT had recently treated these as inputs under Rule 57 in 1989 (20) ECC 117 which decision was later affirmed by the Supreme Court in Salonah Tea Company case], the company had woken up to file its claim u/s 11B of Central Excise Act for refund of duty totalling Rs. 43,96,116.42. But it was surprisingly put on show cause notice for proposed disallowance of claimed refund and its claim was eventually rejected by appellant No. 4 by order dated 15-10-1990 on the ground that it was not covered by expression ''refund'' occurring in Section 11B and that it was time barred having been filed expiry of prescribed period of 6 months.

2. Feeling aggrieved the company filed M.P. No. 599/91 seeking declaration that

it was entitled to Modvat credit under Notification No. 177/86-C.E., dated 1-3-1986 and mandamus directing appellants to refund the paid excise duty. This petition was resisted by appellants primarily on the ground that company''s claim was time barred and that it had failed to exhaust the alternate remedy provided u/s 35 of the Central Excise Act.

3. The writ court on consideration of the matter overruled the two pleas taken by appellants and disposed of the writ petition by providing as under :

"This petition is thus allowed to the extent that petitioner is held entitled to refund in terms of Section 11B that is the main provision subject to the exception carved out in the proviso."

4. Appellants have filed this appeal reiterating their stand that claim of respondent company was time barred and that its writ petition was not entertainable in the face of alternative remedy. The appeal is contested by the other side both on its tenability and on merits.

5. Given regard to rival contentions, it cannot be overlooked that respondent company had rushed to invoke writ jurisdiction of this court without exhausting the provided statutory remedies. Nor could it be washed away that forums provided by the statute were best suited to examine the grievance and resolve the dispute. It is understandable that company may have strategically chosen to take to writ remedy for its own reasons perhaps to get over the limitation bar and pre-deposit requirement etc. But all that shall not be allowed to change the rules of game, moreso in matters involving public revenue. It is also noticed that writ court direction was somewhat contradictory in terms in finding the company entitled to refund on one hand and making it subject to provisons of Rule 11B, on the other.

6. Therefore, all things considered, we deem it appropriate to dispose off this appeal to the mutual satisfaction of both sides by providing as under :-

Impugned writ court judgment dated 3-10-1996 passed in M.P. No. 599/91 shall stand quashed. Respondent company''s claim preferred u/s 11B of the Act shall revive for being considered and disposed off by Commissioner of Central Excise, Indore (App. No. 3). Requirements, if any, of any limitation bar or pre-deposit shall not come in the way of disposal of claim by the Commissioner concerned who shall decide the matter within six months from receipt of this order on merits. Parties to appear before him on 10-1-1999. Either party aggrieved of the order passed by him shall be at liberty to take appropriate remedy available in law.