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(1991) 10 BOM CK 0016

In the Bombay High Court

Case No : Writ Petition No. 2301 of 1987

Vidarbha Veneer Industries Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 25-10-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 11
Central Excises and Salt Act, 1944 — Section 11B, 4

Citation : (1992) 58 ELT 435

Hon'ble Judges : H.D. Patel, J;G.D. Patil, J

Bench : Division Bench

Advocate : Shri V.C. Daga, for the Appellant; Shri R.P. Darda, for the Respondent

Judgement

H.D. Patel, J.—The petitioner is a public limited company within the meaning of the Companies Act, 1956 and at all material times carried on the business of manufacturing and marketing plywood and allied products. The petitioner has its factory at M.I.D.C. Estate, Hingna, Nagpur, where the flush doors and other products are manufactured.

2. The subject matter of this petition is the validity of the levy of excise duty on flush doors under Tariff Item 16B of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act" for the sake of brevity) and consequent refund of the amount of excise duty collected without the authority of law.

3. According to the petitioner, flush door is neither a combination nor a finished article of plywood or board falling under Item 16B of the Central Excise Tariff and, therefore, they were not liable to pay excise duty at the rate specified in that item. The correctness of the levy of excise duty on flush doors was challenged in Writ Petition No. 938 of 1977, M/s. Wood Craft Products Ltd. v. The Superintendent, Customs and Central Excise, Dibrugarh and Others, before the Delhi High Court. By judgment dated 17-3-1980 reported in Woodcrafts Products Limited Vs. The Superintendent (Technical) and others, it was held that the product flush doors cannot be classified under Item 16B of the Central Excise

Tariff, but it can be classified under item 68 as "goods not elsewhere specified."

4. Soon after the judgment was delivered the petitioner informed the respondents vide their letter dated 6th/21st April, 1980 to follow the judgment in M/s. Wood Craft Products Ltd.''s case and requested that the duty under Item 16B of the Central Excise Tariff should not be levied on flush doors manufactured by the petitioner.

5. In the meanwhile the judgment of the Delhi High Court was challenged by the Union of India before the Supreme Court in SLP No. 429-30 of 1981. The said petition came to be rejected summarily on 16-4-1981 and hence the judgment delivered by the Delhi High Court in M/s. Wood Craft Products case (cited supra) became final and conclusive in the matter of classification of flush doors. By a Circular dated 1st July, 1981 the Government of India agreed to classify flush doors under Item 68 of the Central Excise Tariff.

6. Consequent upon the judicial pronouncement the petitioner preferred a refund claim on 13-4-1982 before the Collector, Central Excise, Nagpur. The difference claimed was computed at Rs. 7,78,834.49 for the period between 28-7-1975 and 31-3-1981. The respondent Assistant Collector of Central Excise vide his order dated 27-8-1982 while admitting refund of Rs. 2,26,798.34, rejected the remaining claim for an amount of Rs. 5,51,453,90 on the ground that the claim is time barred u/s 11B of the Act. For claiming the rejected amount of refund, the petition is filed.

7. On behalf of the respondents a vehement attempt was made to support the order and in particular it was emphasised that the petitioner voluntarily classified the flush doors as covered under Tariff item 16B and, therefore, it is not now open for them to contend that they paid the excise duty under mistake of fact and/or law.

8. It may be relevant to observe here that Section 11B was brought into force on 17-11-1980. Prior to that the refund of excise duty was governed by Rule 11 of the Central Excise Rules, 1944. Therefore, Section 11B of the Act would normally apply to refund claims arising after 17-11-1980. In any event Rule 11 and Section 11B are practically similar except for one difference in language, but the meaning is the same. The only distinguishing feature of Section 11B is that sub-section (5) is new and Rule 11 did not contain that provision. Thus the decisions of various courts as regards the right of the claimant to get refund under any of the two provisions will not make any difference.

9. There are no dearth of cases which hold that if the amount is paid under mistake of law, neither Rule 11 of the Central Excise Rules or Section 11B of the Act would bar the claim on the ground of limitation. Some of these case laws also decide the point of estoppel raised on behalf of the respondents. We will consider some of the judgments relevant for the purpose.

10. In D. Cawasji & Co. and Others v. The State of Mysore and Another 1978 (2)

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ELT J154 it is laid down that the period of limitation prescribed for the recovery of money paid under a mistake of law is three years from the date when the mistake is known, be it a 100 years after the date of payment, and this is the reasonable standard by which the delay in seeking remedy under Article 226 of the Constitution can be measured.

11. The decision of this Court in Ceat Tyres of India Ltd. v. Union of India and Others 1980 (6) ELT 56, relied upon the interpretation put forth to Rule 11 by a Division Bench of the Patna High Court in Bata Shoe Company v. Collector of Central Excise 1972 Tax L.R. 1833, which reads as under :

"So far as Rule 11 is concerned, it is manifest that it cannot stand in the way of the petitioner. That Rule is designed to deal with cases of payment or adjustment made through inadvertence, error or misconstruction. When tax is paid where it is not payable under the law, it is regarded as payment made under a ''mistake'' as that word is understood in the Contract Act. See, for instance, ''The Sales Tax Officer, Banaras v. Kanhya Lal Mukund Lal Saraf AIR 1959 SC 133 and State of Madhya Pradesh Vs. Bhailal Bhai and Others, . The notion of ''mistake'' is materially different from that of inadvertence, error or misconstruction. Error is not synonymous with mistake in Rule 11, it obviously means some clerical or arithmetical error. The word ''misconstruction'' also is not to be understood in the technical sense of misconstruction or misinterpretation of a provision of law or notification. Occurring as it does in Rule 11 in the context of inadvertence or error, it obviously connotes an erroneous building up or compiling and calculating in the arithmetical sense only. It is merely intended to resolve or finalise dispute as to accounting. This Rule is, therefore, of no avail to the Department before us."

"It is also laid down in the case of Ceat Tyres that if the petitioner under an erroneous impression or misconception proceeded on the basis that the tyres fell within Item 16(1) and accordingly paid a higher duty on self-assessment, this was obviously on the face of it a mistake of fact and/or law on the part of the petitioner, for no rational person would go out of his way and pay a higher tax or duty than what he would be liable to do.

12. In the Associated Bearing Company Limited Vs. Union of India and another, this Court held that it is obvious that once the recovery of excise duty by the Department was held to be illegal, the provisions of Rule 11 would not be attracted and a claim for such refund could be entertained within three years from the date when the mistake of law was discovered. This view was followed in another decision of this Court in Maharashtra Vegetable Products Pvt. Ltd. and Another v. Union of India and Others 1981 (8) ELT J 468.

13. A similar view is expressed by a Division Bench of this Court in Wipro Products Ltd. and another Vs. Union of India and another, while discussing the scope and ambit of Rule 11. It was held that if the levy of central excise was totally without jurisdiction and outside the provisions of Section 4 of the Central Excise Act, the bar of limitation prescribed under Rule 11 of the Central Excise

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Rules was not applicable.

14. There is yet another decision of this Court which endorses the aforesaid view and also lays down that when a mistake of law is common to both the parties, the question of estoppel does not arise. Such a decision is given in Golden Tobacco Company Ltd. Vs. Union of India and another, .

15. From the aforesaid discussions no doubt is left, but to conclude that once the recovery of excise duty by the Department is held to be illegal, the provisions of Rule 11 or for that matter even Section 11B of the Central Excise Act would not be attracted and a claim for such refund could be entertained within three years from the date the mistake of law was discovered. Despite such a clear position, the respondent Assistant Collector ventured to hold that the claim of the petitioner to the extent of Rs. 5,51,453.90 was barred by limitation u/s 11B of the Central Excise Act and accordingly rejected the claim. Therefore, the petitioner had to move the petition to claim the rejected amount. The petition was expeditiously filed on 4-11-1982, but it could not be heard promptly. The petitioner is thus deprived of the money legally due to them for about nine years. They are entitled to be compensated by payment of interest. The petitioner has claimed interest at 18% per annum from the dates when the various amounts were illegally collected from time to time. It is, however, not possible to grant such high rate of interest and that too from the dates claimed. In our opinion, the respondents should pay interest at the rate of 12% per annum on the amount due from 4-11-1982 which is the date of filing of the petition till its payment.

16. In the result, the petition is allowed. The impugned order to the extent the petitioner''s claim is rejected, is quashed and set aside. We further direct the respondents to pay Rs. 5,51,453.90 to the petitioner being the excess amount of excise duty paid on flush doors from 28-7-1975 to 21-4-1980 with interest at the rate of 12% per annum from 4-11-1982 till its payment within four weeks from today. Rule is accordingly made absolute. We however, make no order as to costs.

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