(1997) 07 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No. 11155 of 1988

Vikrant Tyres Ltd. APPELLANT

Vs

Asstt. Collector of Central Excise, Mysore RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:
Central Excise Rules, 1944 — Rule 18(1)
Central Excises and Salt Act, 1944 — Section 11B, 11B(2), 3, 35A
Customs Act, 1962 — Section 27

Citation : (1998) 101 ELT 579

Hon'ble Judges : K. Gnanaprakasan, J

Bench : Single Bench

Advocate : Shri S. Ramasubramanian, for the Appellant; Shri K. Jayachandran, for the Respondent

Judgement

1. The Petitioner has filed this Writ petition for issue of Writ of mandamus directing the respondents to refund the amount of Rs. 19,024.04 to the petitioner covered by an Order No. 65/88 (B), dated 30-6-1988 of the Second Respondent together with interest at 18% per annum.

2. The contention of the petitioner is that in exercise of the powers under Rule 18(1), of the Central Excise and Salt Act. The Central Government issued Notification No. 184 of 1985, dated 9-8-1985 which was amended by Notification No. 232 of 1985, dated 14-11-1985. In terms of the said notification Tread Rubber was exempted from payment of duty, if cleared for home consumption in any financial year in the case of first clearance, upto an aggregate value not exceeding Rs. 7,50,000/- (Rupees Seven and Half lakhs only) from so much of the Excise Duty leviable thereon u/s 3 of the Central Excise and Salt Act. During the financial year 1985-86, the value of clearance of Tread Rubber from the petitioner''s factory was Rs. 1,07,407.44 which was within the permissible limits contemplated under Notification No. 184 of 1985, dated 9-8-1985 as amended by Notification No. 232 of 1985, dated 14-11-1985. By mistake, the Petitioner''s company had paid a sum of Rs. 19,02.04 as Excise Duty for Tread Rubber. The

present petition is for the refund of the same.

3. The petitioner filed a refund claim before the first respondent claiming a refund for the sum of Rs. 19,029.04 and the first respondent rejected the claim by his letter dated 8-2-1987 on the ground that the claim is time barred under the provisions of Section 11B of Central Excises and Salt Act, 1944. The petitioner also filed an appeal u/s 35A before the Second respondent who is the Appellate Authority, and he had also rejected the appeal by his order dated 30-6-1988, on the ground that the claim for refund being barred under the provisions of Section 11B of the Central Excise Act. Aggrieved, by the same the petitioner has filed this writ petition.

4. The respondents have not filed any counter, but argued the matter.

5. I have heard the learned advocate for the petitioner and the learned advocate for the respondents. The learned Advocate for the respondents straightaway drawn my attention in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, wherein refunds of Central Excise and Customs Duties paid have been dealt with elaborately. All claims for refund except where levy is held to be unconstitutional, to be preferred and adjudicated upon u/s 11B of the Central Excise Act, 1944 or u/s 27 of the Customs Act, 1962 and subject to claimant establishing that burden of duty has not been passed on to third party.

Section 11B : Claim for refund of Duty :

(1) Any person claiming refund of duty of excise may make an application for refund of such duty to the Assistant Collector of Central Excise before the expiry of six months from the relevant date.

Further Section 11B(2) stated "If, on receipt of any such application, the Assistant Collector of Central Excise 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 and the amount so determined shall be credited to the Fund :

Provided that the amount of duty of excise as determined by the Assistant Collector of Central Excise under the foregoing provisions of this sub-section, shall instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to (d) duty of excise paid by the manufacturer, if he had not passed on the incidence of such duty to any other person.

6. Hence, it is crystal clear that the manufacturer is entitled to refund the Excise Duty only when he has not passed on the incidents of such duty to any other person. In this instant case, the petitioner has not claimed so, as such the manufacturer had no vested legal right to refund when he passed on the incident of duty to others. To quote from the above judgment.

"The obligation to prove that duty has not been passed on to another person is always there as a pre-condition to claim of refund. It cannot also be said that by giving retrospective effect to Section 11B, any vested rights or substantive rights are being taken away. The deprivation, if at all, is not real. The manufacturer has already collected the duty from his purchaser and has thus reimbursed itself. A manufacturer had no vested legal right to refund even when he had passed on the burden of duty to others".

7. Therefore, I come to the conclusion that this Writ petition for the return of excise duty has no legs to stand and the same deserves to be dismissed. Accordingly, this Writ petition is dismissed. However, there will be no order as to costs.

