
(2012) 08 GUJ CK 0091

In the Gujarat High Court

Case No : Special Civil Application No. 11990 of 2004

Zircon Plastic P. Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 226, 265, 32
Contract Act, 1872 — Section 72
Customs Act, 1962 — Section 27

Citation : (2013) 20 GSTR 361

Hon'ble Judges : Harsha Devani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Harin P. Raval for respondent No. 1 and Darshan M. Parikh, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—The petitioners have prayed for a direction for refund sum of Rs. 7,95,949. The petitioners have also challenged the order passed by the Revenue authority, declining to grant such refund. The petitioners are engaged in the business of manufacturing excisable goods. The petitioners paid excise duty on clearance of such goods including the value of freight which comes to the total amount of Rs. 7,95,949. The case of the petitioners was that said duty was not payable. The petitioners therefore, filed the refund applications before the Department Authority on January 13, 2003, which were received on January 20, 2003. The adjudicating authority issued a show-cause notice dated April 23, 2003, as to why such refund claims should not be rejected since the claim was filed beyond the period of limitation prescribed u/s 11B of the Central Excise Act, 1944 (hereinafter referred to as the "Act" for short). The petitioners replied to the show-cause notice and denied the allegations. The adjudicating authority however, passed three separate orders rejecting the claim on the ground of limitation. In one case, however, finding that the refund application was filed

within time, such claim was accepted.

2. Against the rejection orders, the petitioners preferred an appeal. Such appeal was dismissed. Hence, this petition.

3. The learned counsel for the petitioners submitted that duties were paid under mistake and should therefore, refund be granted without reference to the period of limitation. In support of his contention, he relied on the decision of the Division Bench of this court in the case of Indo-Nippon Chemicals Co. Ltd. and Another Vs. Union of India (UOI) and Others, .

4. On the other hand, Shri Darshan M. Parikh for the Department opposed the petition contending that the refund applications were filed beyond the limitation period prescribed u/s 11B of the Act. Such applications were therefore, rightly rejected.

5. It is not in dispute that three refund claims with which we are concerned, were filed beyond the period prescribed u/s 11B of the Act. That being the position, in our opinion, the Departmental authorities committed no error in rejecting such refund claims. Merely because the incidence of duty was not passed on to the consumer, cannot be the sole ground on which refund applications must be allowed. Against the order of the adjudicating authority, granting the refund claim, we are told the Department is in appeal. We are however not concerned with such proceedings.

6. The apex court in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, held as under (page 545 of 111 STC):

The discussion in the judgment yields the following propositions. We may forewarn that these propositions are set out merely for the sake of convenient reference and are not supposed to be exhaustive. In case of any doubt or ambiguity in these propositions, reference must be had to the discussion and propositions in the body of the judgment.

(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff--whether before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 or thereafter--by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with the Central Excise Tariff Act, 1985 or the Customs Act, 1962 read with the Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or notifications issued under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under article 226--and of this court under article 32--cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction

consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of section 11B. This is for the reason that the power under article 226 has to be exercised to effectuate the rule of law and not for abrogating it.

The said enactments including section 11B of the Central Excises and Salt Act and section 27 of the Customs Act do constitute "law" within the meaning of article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions, must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self contained enactments providing for levy, assessment, recovery and refund of duties imposed thereunder. Section 11B of the Central Excises and Salt Act and section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. All refund claims except those mentioned under propositions (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excises and Salt Act or the Customs Act, as the case may be. It is necessary to emphasise in this behalf that Act provides a complete mechanism for correcting any errors whether of fact or law and that not only an appeal is provided to a Tribunal--which is not a Departmental organ--but to this court, which is a civil court.

The decision of this court in the case of Indo-Nippon Chemicals Co. Ltd. and Another Vs. Union of India (UOI) and Others, cannot be applied in the present case. In the said case, the Department itself under mistaken belief had insisted on collecting certain duties from the assessee. The assessee had also paid such duty under mistake and on insistence of the Department. It was in this background, that the court granted refund of such amount collected. However, we have in a separate order passed today in Swastik Sanitary wares Ltd. Vs. Union of India, Special Civil Application No. 4676 of 2004, expressed our prima facie doubt about certain observations made by this court in the case of Indo-Nippon Chemicals Co. Ltd. and Another Vs. Union of India (UOI) and Others, . In any case, the facts of the present case are vitally different. The observations of this court in the case of Indo-Nippon Chemicals Co. Ltd. and Another Vs. Union of India (UOI) and Others, cannot be applied. The petition is therefore, dismissed. Rule is discharged.