

(2009) 09 MAD CK 0147

Madras High Court**Case No:** Writ Petition No's. 6366 and 6367 of 2003

Arignar Anna Sugar Mills

APPELLANT

Vs

CEGAT, Chennai

RESPONDENT

Date of Decision: Sept. 14, 2009**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 11B, 11B(1)

Citation: (2012) 277 ELT 63**Hon'ble Judges:** V. Ramasubramanian, J**Bench:** Single Bench**Advocate:** T. Ramesh, for the Appellant; M.S. Govindarajan, Addl. CGSC, for the Respondent**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

The petitioner is a Cooperative Sugar Mill. It is manufacturing molasses as a bye-product, which is an excisable commodity. Since the storage capacity of the Tanks maintained by the petitioner was less, they sought permission of the Excise Department to store molasses in kutchia earthen pits, after filling up the Steel Tanks without payment of duty. The Excise Department permitted them to do so upon payment of duty. The petitioner accordingly paid the duty even at the time of storage but before the molasses went out of the factory.

2. Subsequently, the petitioner suffered two problems viz. (i) the sale value of the stored molasses got reduced and (ii) a portion of the stored molasses also became unfit for consumption or sale. Therefore on these two grounds, the petitioner claimed refund of the excise duty paid on such molasses. The claim was rejected first by the Assistant Commissioner, by an Order-in-Original dated 24-6-1997 and later by the Commissioner, by an Order-in-Appeal dated 28-9-2001 and

subsequently by the Tribunal by an order dated 24-9-2002 12002 (150) E.L.T. 1103 (Tribunal)]. It is against these orders that the petitioner has come up with the present writ petitions.

3. There is no dispute about the fact that the petitioner paid excise duty in advance, when the petitioner sought permission to store the molasses in kutcha earthen pits. There is also no dispute about the fact that the sale value of a part of the molasses got reduced at the time when they moved out of the factory. In other words, excise duty was paid by taking the market value as on the date of storage. But by the time they were actually sold, the market price fell. Further there is no dispute about the fact that a portion of the molasses became unfit for consumption or sale. Therefore the entitlement of the petitioner on factual basis, to refund of excise duty is virtually not in dispute.

4. However the Department disputes the claim for refund on two grounds viz. (i) that their claim for remission was rejected earlier and it had attained finality and (ii) that the claim for refund was made beyond the period of limitation prescribed u/s 11B of the Central Excise Act, 1944.

5. Insofar as the first ground is concerned, it is seen that while permitting the petitioner to store molasses in kutcha earthen pits, there was a demand by the Department to pay the duty first. It was at that time that the Superintendent of Central Excise wrote a letter, warning the petitioner that remission cannot be sought for at a later point of time. Such a communication cannot be taken to be an adjudication of the dispute. The claim for refund is to be processed under the statutory provisions by an authority conferred with quasi judicial powers. The said powers cannot be annulled merely because of a letter written by the Superintendent of Central Excise. Therefore I reject the first ground taken by the respondents.

6. Insofar as the second ground is concerned, Section 11B(1) of the Central Excise Act, 1944 entitles a person to make a claim before the expiry of one year from the "relevant date". The second proviso to sub-section (1) makes it clear that the limitation of one year will not apply where the duty and interest on the duty had been paid under protest. The orders of the original and appellate authorities as well as the Tribunal disclose the fact that the petitioner paid the duty under protest. However, it is the case of the respondents that such protest was not in accordance with the procedure prescribed under Rule 233-B. But in [Indian Piston Limited Vs. The Collector of Central Excise](#), the Supreme Court rejected the very same contention on the part of the Department.

7. Moreover, the words "relevant date" are defined in Explanation (B) u/s 11B. Sub-clause (eb) under Explanation (B) defines a relevant date to mean the date of adjustment of duty after final assessment in case where the duty on excise is paid provisionally under the Act. Therefore the claim of the petitioner for refund cannot be said to be beyond the period of limitation. In view of the above, both the writ

petitions are allowed and the respondents are directed to refund the excess duty payable to the petitioner, after appropriating the duty in respect of the goods actually sold with reference to their sale value within a period of three months from the date of receipt of a copy of this order. No costs.