

**(1991) 08 CAL CK 0019**

**Calcutta High Court**

**Case No:** None

Super Wire Industries

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision:** Aug. 9, 1991

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 11B

**Citation:** (1992) 58 ELT 429

**Hon'ble Judges:** Suhas Chandra Sen, J

**Bench:** Single Bench

**Advocate:** Negative Ahmed, for the Appellant; D.P. Mukherjee and Mukherjee, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Suhas Chandra Sen, J.

The petitioners are manufacturers of Super Enamelled Copper Winding Wire. During the manufacturing period in dispute the Modvat Scheme was in operation. The petitioners paid excise duty at the rate of 15 per cent by mistake whereas the duty was payable at the rate of 5 per cent. Becoming aware of the excess amount of the duty paid, the petitioners lodged a claim for refund. This claim was rejected by the Assistant Collector of Central Excise by an order dated 19th July, 1989. There was an appeal by the petitioners. The Collector of Central Excise (Appeals) passed order dated 25th August, 1989 and allowed the appeal of the petitioners and directed as follows:-

"I have considered the matter. The facts that the appellants were eligible for payment of duty @ 5% ad valorem during the material period under Notification No. 175/86-CE dated 1-3-1986, as amended, and that there were excess payments were not disputed by the Asstt. Collector. Rejection of refund was on the ground that

claim from 1-4-1987 to 5-11-1987 was submitted after expiry of 6 months taking into consideration of their formal claim letter dated 3-11-1987 received on 4-11-1987 and that payment of duty was according to appellants' choice. That being the case refund is admissible for the amount of duty paid for a period covering 6 months from the date of receipt of refund claim in Asstt. Collector's office. The relevant date is the date of payment of duty u/s 11B of the Central Excises and Salt Act, 1944 and not date of assessment. I accordingly set aside the impugned order and allow the appeal to the extent indicated above".

2. The Assistant Collector, however, did not carry out the order of the Collector of Central Excise. The inaction on the part of the Assistant Collector was most improper. The superior officer's order has to be carried out. Otherwise the entire system of administration will break down. The petitioners thereafter moved a writ petition which was numbered as C.O. No. 101(w) of 1991 and which was disposed of by Justice Mrs. Pal by the following order:-

"Having regard to the provisions of the Act relating to the Modvat Scheme as well as the decision of this court in Assistant Collector of Central Excise and Ors. v. Madura Coats Ltd., reported in 1987 (33) ELT 29, I dispose of the writ petition by directing the respondents to complete the investigation on the basis of the petitioners' letter dated 4-9-1989 (being annexure A to the affidavit-in-opposition) within a period of two months from date i.e. by 3rd August, 1991 and to allow credit for such excess duty under the Modvat Scheme on the basis of such investigation".

3. The order passed by Justice Mrs. Pal has also not been carried out. No order has been passed on 3rd August, 1991, although in a show cause notice dated 1st July, 1991 the petitioners were informed that no adjournment could be granted in view of the High Court's direction that the refund claim was to be settled by 3rd August, 1991.

4. It has now been argued on behalf of the respondents that since the matter was sub judice as a result of this writ petition, the Assistant Collector of Central Excise refrained from passing any order. It is difficult to follow this argument. No interim order was passed on this writ petition. There was a direction in the earlier writ petition to dispose of the refund claim by 3rd August, 1991. There is no reason why the earlier order of this court was not carried out.

5. However, I find no satisfactory reason why the Assistant Collector should not carry out the earlier order passed by the Collector. I find nothing in the order of Justice Mrs. Pal which contains any bar for passing any order. On the contrary, Justice Mrs. Pal directed the respondents to complete the investigation on the basis of the petitioners' letter dated 4-9-1989 and to allow credit for such excess duty. This is a categorical directive which should have been carried out.

6. An argument has been taken on the theory of unlawful enrichment. It has been contended that the petitioners have raised their prices and realised whatever has

been paid to the department. That is not a ground for refusal to grant refund contained in the Central Excise Act. The Statutory authorities must act in accordance with law laid down in the Statute. If any excess payment of tax has been made, the petitioners are entitled to apply for refund. The Statutory authority has to allow the refund or to refuse the refund in accordance with law laid down in the Statute. The Statutory authority cannot refuse refund on a ground which is extraneous to the Statute. It is also well settled that there is no equity about taxation.

7. The writ petition, therefore, succeeds. The respondents are directed to calculate the refund due to the petitioners in terms of the order passed by the Collector, if it has already not been done, within a period of fortnight from the date of communication of this order and grant refund to the petitioners forthwith. The writ petition is disposed of finally as above. There will be no order as to costs.

8. The department is directed to supply xerox copy of this order to the learned Advocates appearing for the parties on usual charges and on an undertaking to apply for and obtain certified copy of this order.