

(2010) 05 CAL CK 0047

Calcutta High Court

Case No: Writ Petition No. 1366 of 2004

Sukhi India Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: May 3, 2010

Acts Referred:

- Customs Act, 1962 - Section 27
- Customs Tariff Act, 1975 - Section 3

Citation: (2010) 258 ELT 95 : (2011) 6 RCR(Civil) 2576

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: R.C. Chaudhury and Saswati Joardar, for the Appellant; Anwara Qureshi, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.

The Court: The petitioners in this Article 226 petition dated July 27, 2004 are aggrieved by the order of the Commissioner of Customs (Appeals) dated November 12, 2003, Annexure P5 at p.49, directing the authority making the order in original to decide afresh their refund claims under provisions of the Central Excise Act, 1944.

2. The first petitioner used to import plastic for the purpose of manufacturing plastic granules. Alleging that it did not pay additional duty u/s 3 of the Customs Tariff Act, 1975 pursuant to Circular No. 38/2000-Cus., dated May 10, 2000 of the Ministry of Finance, Department of Revenue, New Delhi, the Department of Directorate of Anti Evasion, Central Excise issued a show cause notice dated June 14, 2000. In response to the show cause notice the petitioners paid the countervailing duty under protest, and then filed WP No. 2845 of 2000 under Article 226.

3. By an order dated October 16, 2001 the circular dated May 10, 2000 and all steps taken by the customs on the basis thereof were quashed. The SLP before the

Supreme Court was dismissed as withdrawn. Under the circumstances, the petitioners filed application u/s 27 of the Customs Act, 1962 for refund of the countervailing duty. By the order in original the refund claims were turned down on the ground of limitation. By the impugned order the Commissioner of Customs (Appeals) remitted the matter for fresh decision under provisions of the Central Excise Act, 1944.

4. Mr. Chaudhury, counsel for the petitioners, has argued that since the countervailing duty was paid under protest in response to show cause notice, the payment was in the nature of pre-deposit by way of security, and hence the respondents could not refuse to refund the amounts taking the plea of limitation. According to him, once the petitioners became entitled to refund, the respondents incurred the obligation to pay interest from the date of deposit.

5. Mrs. Qureshi, counsel for the respondents, has submitted that the authority to whom the appellate authority remitted the matter has not given his decision. According to her, it is difficult to say that the petitioners are not entitled to refund, for the circular in terms of which countervailing duty was demanded was quashed by the court. She, however, has disputed the petitioners' claim that they are entitled to interest from the date of deposit.

6. After considering the cases of the parties stated in the petition and the opposition and hearing their counsel, I am of the view that the authority making the order in original was not right in holding that the refund claims were barred by limitation and the appellate authority was not justified in remitting the matter to the authority making the order in original for giving a fresh decision under provisions of the Central Excise Act, 1944.

7. It has been admitted by the respondents in their opposition that the petitioners paid the countervailing duty in response to the show cause notice issued on the basis of the circular dated May 10, 2000. Payment made in response to the show cause notice was in the nature of a pre-deposit by way of security. Hence once the circular was quashed by this Court, the respondents incurred an unqualified obligation to refund the amounts paid for countervailing duty.

8. It was not a case of erroneous deposit, but a deposit of duty in response to a show cause notice under protest. Taking the plea of limitation the respondents could not refuse to refund the amounts paid. Since they withheld payment without any valid reason, they incurred liability to pay interest from October 16, 2001.

9. For these reasons, I allow the petition and order as follows. The respondents are directed to refund all amounts paid by the petitioners from time to time on account of countervailing duty with interest at the rate 12% per annum from October 16, 2001 till the date of actual payment, and release all provisional duty bonds executed and submitted by the petitioners, within three weeks from the date of communication of this order. No costs. Certified xerox.