Asstt. Collector of Central Excise Export Refund, Calcutta and Others Vs A. Tosh and Sons. Pvt. Ltd. and Another

Court: Calcutta High Court

Date of Decision: Aug. 1, 2003

Acts Referred: Customs Act, 1962 â€" Section 27(1)

Citation: 107 CWN 872

Hon'ble Judges: Ashok Kumar Mathur, C.J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Kishore Dutta, for the Appellant;

Final Decision: Allowed

Judgement

Ashim Kumar Banerjee, J.
The present appeal arises out of the judgment and order dated 14th May, 1990 wherein a learned single judge

of this court directed the Central Excise Authority to allow refund of a sum of Rs. 2,19,245.42 u/s 11B of the Central Excise and Salt Act, 1944

(hereinafter referred to as the ""said Act""). u/s 11B of the said Act of 1944 read with Rule 12 of Rules framed thereunder Government from time to

time by notification allows rebate in respect of excise duty paid on certain goods on being exported abroad. The respondent exported tea for

which they were entitled to rebate of the excise duty u/s 11B of the said Act. To avail such rebate the respondent was to apply within a stipulated

period in prescribed form being Form B which admittedly respondent did not submit within the stipulated period. According to respondent, they

initially gave a letter to the Excise Authority claiming refund. Such letter of the respondent dated 14th November, 1981 was despatched under

certificate of posting which was never received by the department. The respondent ultimately applied for rebate in the prescribed format on August

6, 1982 which was beyond the prescribed period of limitation. Ten separate show cause notices were issued by the Excise Department asking the

respondent to show cause why the claim for rebate should not he rejected. Respondent replied to the said show cause notices that resulted in the

order of rejection dated March 8, 1984. An appeal was preferred before the Appellate Authority. The Appellate Authority by its order dated

October 25, 1984 affirmed the order of rejection.

2. On or about December 19. 1986 the respondent filed the instant writ petition. The instant writ petition was allowed by the learned Single Judge

by a judgment and order on May 14. 1990 allowing the writ petition inter alia directing refund of the said sum of Rs. 2.19.245.42.

3. On perusal of the judgment and order under appeal it appears to us that the learned judge relying on various Apex Court decisions came to a

finding that the claim for refund should not have been refused on the plea of limitation as that would amount to unjust enrichment. Learned single

judge had relied on the ratio decided by the Apex Court in various cases wherein the Apex Court was of the view that the Governmental agencies

should not disallow claim for refund on the plea of limitation which would amount to unjust enrichment. The learned judge heavily relied on the

Madras Port Trust case reported in 1979 Excise Law Times. Page 396 wherein the refund of warfare and demurrage was disallowed on the plea

of limitation. The Apex Court held that the public authority in all morality and justice should not take up the plea of limitation to defeat a just claim

of the citizen.

4. On perusal of the decision of the learned single judge we are of the view that the learned single judge, with all humility may I say, failed to

appreciate that the claim for refund u/s 11B was nothing but a concession in case of excisable goods having been exported abroad. By the said

notification. Government in exercise of power conferred by Rule 12 of the Central Excise Rules. 1944 granted rebate of excise duty paid on

unblended tea falling under item 3 of the first schedule of the said Act of 1944 on being exported outside India except Nepal and Bhutan at the rate

of 40 paise per kg. Such refund in terms of Government notification dated October 17, 1984 ""was nothing but an incentive to exporters. The

excise duty paid by the respondent was just and appropriate in accordance with the tarifl"" prescribed therefore. Claim for refund was not for any

excise duty found to have been paid in excess by the respondent and/or realised by the department. Had it been so. that would amount to unjust

enrichment

5. Although Section 11B provides for refund in our view the same is nothing but an incentive to exporters. To avail such benefit, one has to adhere

to the terms and conditions stipulated therefore.

6. Our attention was also drawn by the learned counsel"" appearing for the appellant to the decision of the Apex Court in the case of Miles India

Ltd. vs. Assistant Collector of Customs, reported in 1987 30 ELT 641 wherein the Apex Court held as follows:

After the matter was heard for some time and it was indicated that the Customs Authorities, acting under the Act, were justified in disallowing the

claim for refund as they were bound by the period of limitation provided therefore u/s 27(1) of the Customs Act, 1962, learned counsel for the

Appellant sought leave to withdraw the appeal. We accord their leave to withdraw the appeal but make It clear that the order of the Customs,

Excise & Gold (Control) Appellate Tribunal suffers from no infirmity. If really the payment of the duty was under a mistake of law. the appellant

may seek recourse to such alternative remedy as it may be advised. The appeal is accordingly dismissed as withdrawn.

7. In the instant case although the respondent contended that the claim was made by letter dated 14th November, 1981 within the prescribed

period of limitation, the department found no such letter on record and asserted that the said letter was never received by the department In any

event, requirement of Section 11B was to make a claim within 6 months in a prescribed format being Form B. Admittedly the said letter dated

November 14, 1981 was not in prescribed format and the claim was formally lodged only on August 6, 1982 in a prescribed format which was

beyond 6 months. In view of the above, we are of the view that to avail the claim for refund u/s 11B the respondent was to lodge their claim for

refund in prescribed format within 6 months. Since the same was not done the respondent was not entitled to such refund and the claim for refund

was rightly rejected by the Assistant Collector as well as by the Appellate Authority.

In the result, the appeal succeeds.

The judgment and order dated May 14, 1990 is set aside.

There would be, however, no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.

Ashok Kumar Mathur, C.J.

I agree.