

**(1988) 04 BOM CK 0054**

**Bombay High Court**

**Case No:** Writ Petition No. 584 of 1984

Standard Mills Company Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** April 19, 1988

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1988) 18 ECR 246 : (1988) 36 ELT 389

**Hon'ble Judges:** Sujata V. Manohar, J

**Bench:** Single Bench

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### **Judgement**

1. The petitioners imported potassium chloride Technical Grade during the year 1977-78 under 11 consignments. The petitioners were required to pay countervailing duty in respect of these consignments. According to the petitioners, countervailing duty was not payable and hence they paid countervailing duty under protest and cleared the goods.

2. The petitioners, thereafter, filed refund claims for refund of countervailing duty in November 1977 and January 1978. Eleven such refund claims were filed. By a common order dated 1st March 1978, the Assistant Collector of Customs rejected the refund applications.

3. Under the Tariff Advice dated 2nd April 1979 bearing No. 10/79 which were issued by the Central Board of Excise and Customs, New Delhi, it was clarified that potassium chloride which is not bought or sold in the market as a fertiliser i.e. potassium chloride of Technical Grade was outside the purview of Tariff Item 14HH and hence would not attract countervailing duty.

4. In view of this clarification, the petitioners filed eleven appeals on 12th July 1980. By an order dated 27th April, 1980, the appeals were rejected as time barred. In spite of this rejection, the petitioners were granted refund of countervailing duty in

respect of five applications. Regarding the remaining six applications the petitioners made revision applications dated 14th January 1981. These revision applications were rejected under the order of 2nd December 1982 on the ground that the claims are time barred. Hence, the present petition. The particulars of six refund claims which have been rejected including the amount of countervailing duty of which refund is sought are annexed as Ex. "I" to the petition.

5. The order of rejection was of 2nd December, 1982. The petition is filed on 13th March 1984. This petition was originally rejected on the ground of delay. The appeal court, however, has observed that the delay of one year and three months in filing the petition does not appear so gross as to justify a summary rejection. Clearly, there is no defence on merits. The countervailing duty was collected without any authority of law. There is undoubtedly some delay on the part of the petitioners in claiming the refund. For example, even after the Tariff Advice dated 2nd April, 1979 the petitioners did not file appeals till 12th July, 1980. There is also a delay of over one year in filing the petition. The respondents themselves, however, granted refund in respect of five claims although there was similar delay in claiming those refunds on the part of the petitioners. These delays in my view are not such as to defeat the claim of the petitioners. The countervailing duty was collected without any authority of law and hence the petitioners are entitled to claim the refund of the same. In such a situation the question of unjust enrichment does not arise. The Rule is therefore made absolute in terms of prayer (a) and b(iii). The amount to be refunded together with interest thereon at the rate of 12% per annum, but only from the date of the petition in view of the delay, till payment. In the circumstances, there will be no order as to costs.