

(1982) 10 BOM CK 0027

Bombay High Court

Case No: Misc. Petition No. 945 of 1979

Western Rolling Mills Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Oct. 13, 1982

Acts Referred:

- Central Excise Rules, 1944 - Rule 11, 9

Citation: (1983) 3 ECR 509 : (1989) 43 ELT 221

Hon'ble Judges: S.P. Bharucha, J

Bench: Single Bench

Judgement

1. In a matter substantially on par with this one, Madon, J., as he then was, has commented very unfavorably about respondents' failure to refund moneys collected from the petitioners without authority of law and upon their persistence in arguing technical contentions and wasting public time to no purpose whatever. I am happy to say that in this matter, though a technical objection has been raised, the respondents have not wasted the Court's time.

2. The petitioners carry on business in re-rolling iron and steel products. These are excisable under Item 26-AA(1a) of the First Schedule to the Central Excises and Salt Act, 1944. A Notification dated 30th November, 1963 as amended by Notification 14th August, 1965, exempted from excise duty re-rolled steel products manufactured out of duty paid steel ingots.

3. During the period relevant to this Petition, the Petitioners paid excise duty on the said products in the sum of Rs. 1,92,944/01 p. On 3rd February, 1973, the petitioners addressed a letter to the second respondent, the Asstt. Collector of Central Excise, Division VIII, Bombay, enquiring whether their products were exempted from payment of duty. On 26th February, 1973, the second respondent replied to the petitioner that the matter was receiving attention and the petitioners would be informed. There was, however, no further communication from the second

respondent.

4. Some time in December, 1973, the Steel Re-rolling Association, of which the petitioners are members, drew their attention to the aforementioned Notifications and directed them not to pay duty upon the said products. Some time in January, 1974, the petitioners came to learn of a decision of the Allahabad High Court which suggested that their products were exempted from excise. On 24th January, 1974, the petitioners filed a fresh Classification List showing the duty applicable to their products as "Nil" having regard by the said Notifications. On 14th February, 1974, the Classification List was approved by the respondents and the petitioners' products were thereafter treated as exempt from excise duty.

5. On 4th October, 1974, the petitioners applied for refund the excise duty paid by them in the sum of Rs. 1,92,944/01 p. for the period 23rd March, 1971 to 26th February, 1973. On 31st January, 1975, the petitioners' claim for refund was rejected on the ground that their application was time barred under the provisions of Rule 11, as it then was, of the Central Excise Rules. The petitioners appealed to the 3rd respondent. The appeal was rejected. The petitioners then filed a Revision Application to the 1st respondents which was also rejected. On 29th March, 1979, the petitioners filed this Petition seeking to quash the orders of the respondents and for a direction that the excise duty amount of Rs. 1,92,944/01 p. be refunded to them.

6. Rule 11 of the Excise Duty Rules, as it then stood, stated that no duties or charges which had been paid or had been adjusted in an account current maintained with the Collector under Rule 9, and of which repayment wholly or in part was claimed in consequence of the same having been paid through inadvertence, error or misconstruction, should be refunded unless the claimant made an application for such refund within three months from the date of such payment or adjustment. It is, however, an admitted position that, having regard to other rules, the period of limitation here was one year. It is also an admitted position that the petitioners' application was, in fact, made after the expiry of one year.

7. Learned counsel appearing for the petitioners drew my attention to the Judgment of this Court in *Golden Tobacco Company Limited v. The Union of India and Another* 1983 E.L.T. 2238 (Bom.) : (1982) ECR 584 . The petitioners in that case were assessed to excise duty upon the basis that the manufacturing costs, the manufacturers' profits, the wholesale dealers' selling costs and the selling profits represented the real value of the goods for the purpose of assessment of excise duty. It was not disputed that, in view of the position settled by various Judgments, the petitioners had been assessed to excise duty on a wrong basis. What was contended was that the respondents were not bound to refund to the petitioners any amount collected by them contrary to law for any period which was beyond the period of limitation provided by Rule 11. It was held that the jurisdiction of the Central Excise authorities was to recover duty according to law and, therefore, if any duty was recovered on

post-manufacturing cost or profits, it was not permissible in law. Such levy clearly amounted to exercising excess jurisdiction or acting without jurisdiction and could not be held merely to be an error of jurisdiction in it, therefore, could not be construed as resulting from any error or misconstruction as contemplated by Rule 11. A similar view is taken in *The Svadeshi Mills Company Limited v. Union of India and Ors.* 1982 E.L.T. 237 (Bom.) : (1982) ECR 165, in which Madon, J. commented as referred to by me earlier.

8. It was contended by Shri Lokur, learned counsel appearing for respondents, that this was not a case in which the respondents had recovered excise duty which they had no jurisdiction to do. This was a case where the petitioners had been exempted from payment of excise duty and it was upto the petitioners to claim or not to claim the exemption. If they chose not to claim it, it could not be said to be a recovery which was unlawful or in excess of jurisdiction. Such payment could only be said to have been made out of inadvertence or error or misconstruction and to such payment the provisions of Rule 11 and the period of limitation specified thereby would apply.

9. Where products are exempted from payment of excise duty, no recovery of excise duty which is exempt by the Excise Authorities is lawful. It is in excess of their jurisdiction. The principles enunciated in the judgments cited by me above, which in turn follow other authorities of this Court, squarely apply. Having regard to that, the orders passed on the petitioners' application for refund and in the appeal therefrom and in revision must stand quashed and the respondents must be directed to refund to the petitioners the undisputed amount of Rs. 1,92,944/01 p. within three months from today. Rule accordingly with costs.