(1994) 06 BOM CK 0080

Bombay High Court

Case No: Writ Petition No. 1371 of 1985

Hindustan Cocoa Products		APPELLANT
	Vs	
Union of India		RESPONDENT

Date of Decision: June 8, 1994

Acts Referred:

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

Citation: (1995) 1 BomCR 555 : (1994) ECR 662 : (1994) 74 ELT 525

Hon'ble Judges: M.L. Dudhat, J; B.P. Saraf, J

Bench: Division Bench

Advocate: Mr. S.A. Diwan and Mr. C.M. Mehta, instructed by M/s. Gagrat and Company, for the Appellant; Mr. R.R. Bulchandani and Mr. R.C. Sidhwa, for the Respondent

Judgement

Dr. B.P. Saraf, J.

The petitioner is aggrieved by the order of the Assistant Collector, Central Excise, Division-II, Thane, dated 6th May, 1985 rejecting its claim for refund of excise duty amounting to Rs. 1,80,301.38 in respect of the period commencing from 4-5-1974 to 4-12-1983.

2. The petitioner manufactures deodorised cocoa butter which was classified by it for the purposes of central excise under Item 12 of the Tariff Schedule to the Central Excises and Salt Act, 1944 ("the Act") which applied to "vegetable non-essential oils". During the period from 4-5-1974 to 4-5-1979 the petitioner claimed full exemption of excise duty in respect of deodorised cocoa butter manufactured by it under Notification No. 33/63, dated 1-3-1963 which was duly allowed by the concerned authorities. On 4-5-1979, the petitioner was informed by the Superintendent of Central Excise that it was not eligible for exemption under Notification No. 33/63 in respect of payment of excise duty on manufacture of deodorised cocoa butter. The petitioner was asked to furnish clearance figures from 4-1-1978 onwards. By another notice dated 4-3-1980, the petitioner was called upon to explain why an

amount of Rs. 18,660.08 should not be recovered from it for the period from 2-10-1976 to 3-1-1978. The petitioner paid the above amount on 31-3-1980 under an impression that the duty was leviable as stated by the Superintendent of Central Excise. By another notice dated 17-4-1980, the petitioner was asked to explain why a further amount of Rs. 28,535.80 should not be recovered from it in respect of the period from 4-5-1974 to 1-10-1976. The petitioner paid this amount also on 12-5-1980. The petitioner also paid a further sum of Rs. 16,682.98 in respect of the period from 4-1-1978 to 28-6-1979 on 2-7-1979.

3. Sometime in October-November 1983, the petitioner discovered that the classification of deodorised cocoa butter manufactured by it under Item 12 of Tariff Schedule to the Act was a mistake of law. This mistake, according to the petitioner, was discovered from a letter dated 17-11-1983 from M/s. Cocoa Products and Beverages Ltd., Madras from whom the petitioner purchased some of its requirements. The said company had informed the petitioner that deodorised cocoa butter was correctly classifiable under Item 68 of the Tariff Schedule and was fully exempt from duty. Notification No. 104/82, dated 28-2-1982 was also referred in this connection. The petitioner thereupon filed a revised classification list on 3-12-1983 classifying deodorised cocoa butter manufactured by it under Item 68 and claiming exemption from levy of excise duty in respect thereof on the basis of exemption Notification No. 104 of 1982, dated 28-2-1982. However, pending approval of the revised classification list, the petitioner continued to pay the duty "under protest" at the rate chargeable on goods falling under Item 12 of the Tariff Schedule. The revised classification list was approved by the Assistant Collector on 12-9-1984 and the item deodorised cocoa butter was classified as item falling under Tariff Item 68.

4. There is no dispute about the fact that on approval of the classification of the said item as item falling under Item No. 68, no duty was payable thereon. The approval was given on 12-9-1984. On 15-10-1984 the petitioner applied for refund of Rs. 1,80,301.38 being the excise duty paid by it on deodorised cocoa butter under a mistake of law for the period from 4-5-1974 to 4-12-1983. The petitioner also applied for refund of another sum of Rs. 37,312.92 being duty paid mistakenly for the period from 5-12-1983 to 17-9-1984. This was done on 15-12-1984. The claim of the petitioner for refund for the period from 5-12-1983 to 17-9-1984 for Rs. 37,312.92 was accepted by the respondents and the said amount was duly refunded to the petitioner. The claims of the petitioner for refund for the period from 4-5-1974 to 4-12-1983 were however, rejected by the Assistant Collector, by his impugned order dated 6-5-1985 on the ground that the said claims were barred by limitation u/s 11B of the Act. It is this order of the Assistant Collector which is subject-matter of challenge in this writ petition.

5. We have heard Mr. S. A. Divan, learned counsel for the petitioner and Mr. Bulchandani, learned counsel for the respondents. It is submitted on behalf of the petitioner that the payment of excise duty for the period duty for the period from

4-5-1974 to 4-12-1983 was made under a mistake of law which was discovered for the first time in November 1983 from the letter of M/s. Cocoa Products and Beverages Ltd. dated 17-12-1983 and confirmed by the Assistant Collector on 12-9-1984 when the revised classification list was approved by him. The claim for refund for the above periods was made on 15-12-1984 within less than one year from the date of discovery of the mistake by the petitioner and in one month of the confirmation of the mistake by the Assistant Collector. According to the petitioner, period of limitation prescribed u/s 11B of the Act for filing of refund application does not apply to such refunds.

6. On the other hand, the contention of the learned counsel for the respondents Mr. Bulchandani is that the petitioner, being in the line of business, should have known the correct classification and in any event having acted under a mistake of law for long ten years, the petitioner is not entitled to get relief from this Court under its writ jurisdiction. Counsel submits that even if it is held by this Court that the period of limitation prescribed u/s 11B of the Act for filing of application for refunds under the Act is not applicable to the claims for refunds in question, no refund should be allowed for period beyond three years prior to the date of knowledge. In other words, the submission is that in any event the refund should be restricted to payments made within a period of three years prior to the date of discovery of mistake which in the instant case if November 1983. Mr. Bulchandani further submits that though apparently the goods in question were for the petitioner''s own consumption, in the event of the writ petition being allowed, the respondents should be granted liberty to verify the user of the goods in the question to ensure beyond all doubt the non-applicability of the amended Section 11B of the Act.

7. We have carefully considered the rival submissions. There is no dispute about the fact that the classification of deodorised cocoa butter by the petitioner under Item 12 was a mistake of law which was discovered neither by the petitioner nor by the respondents till the year 1983. It was only in November 1983, when the petitioner having come to know of the said mistake, filed a revised classification list classifying the above item under Tariff Item 68 of the Schedule and on consideration of which the respondent-Assistant Collector also approved the revised classification filed by the petitioner. The correct legal position, therefore, is that deodorised cocoa butter is classifiable under Item No. 68 of the Schedule and not under Item No. 12. The classification made earlier was a mistake of law. The respondents also, acting under the mistaken interpretation of law, issued show cause notices to the petitioner, in pursuance of which the petitioner paid the duty for periods from 4-5-1974 onwards between the year 1978 to 1980. A mistake of law, in our opinion, does not cease to be mistake of law by lapse of time. It is also not material who was responsible for the mistake. Once it is held to be mistake of law, it has to be considered accordingly. In the instant case, it was a mistake of interpretation of a tariff item and which is a question of law and a mistake in that regard is nothing but a mistake of law. The payments were made by the petitioner under such mistake of law. The period of

limitation for refund laid down in Section 11B of the Act, therefore, cannot apply to such refunds. The petitioner is entitled to refund of such amounts.

8. The only question to be considered is whether the petitioner is entitled to refund of duty paid by it during the period of three years prior to the date of discovery of the mistake or to all refund claimed within three years from the date of discovery of the mistake. We do not find much difficulty on this count. It is well settled that the claim for refund of amounts paid under a mistake of law should be made within the period of three years from the discovery or knowledge of the mistake. The date of payment is not the relevant consideration. Reference may be made in this connection to the decision of a Division Bench of this court in Industrial Plastic Corporation Pvt. Ltd. Vs. Union of India, .

9. In view of the foregoing discussion, we allow this writ petition and make the rule absolute in the above terms. The respondents shall examine the claim of the petitioner on merits and refund the excess amount paid by the petitioner in respect of the period from 4-5-1974 to 4-12-1983 within six months from today. There shall be no order as to costs.

10. Issuance of certified copy is expedited.