

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th December, 2011.

+ **LPA 922/2011**

% **NATH & ASSOCIATES** Appellant
Through: Mr. Jagat Singh with Ms. Deepa
Arya, Advocate.

Versus

DG, COAST GUARD Respondents
Through: Mr. Mukesh Anand with Mr. M.P.
Singh & Mr. R.C. Bhadoria, Adv. for
UOI.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The appellant is aggrieved from the dismissal in *limine* on 6th April, 2011 of W.P.(C) No.2303/2011 and W.P.(C) No. 2304/2011 preferred by the appellant. The said writ petitions were filed impugning the communications dated 30th November, 2010 of the Office of Director General, Coast Guard, declining the claim of the appellant for reimbursement of excise duty against supply of Berthing Pontoon.

2. The undisputed facts are, that the appellant had way back in the year 1987 supplied four Berthing Pontoons to the Navy as per the supply order dated 20th August, 1987 of the Director General (Naval Project); Clause 8 of the supply order provided that the excise duty, octroi and the sales tax would be paid by the purchaser at actuals on production of valid documents; the appellant, contending that since Coast Guard was part of the defence establishment in the Government of India and supplies thereto were exempt from payment of excise duty, completed the supply order without paying the excise duty; the appellant was on 26th October, 1989 served with a notice to show cause and thereafter the litigation qua the excise duty payable on the said supplies commenced; the appellant was held liable for excise duty for the said supplies by the orders passed by the Collector of Customs as also by the Customs, Excise & Gold (Control) Appellate Tribunal; during the pendency of the said proceedings the appellant deposited ₹2,17,500/- for supplying Pontoons to the Coast Guard and ₹3,27,048/- for supplying Pontoons to the Navy.

3. After the aforesaid orders attained finality, in October, 2009 the appellant called upon the respondents to reimburse the excise duty to it. The respondents first asked the appellant for some documents and ultimately rejected the claim of the appellant with the reason “the case has been examined at this Headquarters and your claim for refund of excise duty cannot be accepted as the same is time barred”.

4. The learned Single Judge has dismissed the writ petitions preferred by the appellant holding that the appellant ought to have made payment of excise duty under protest at the very first instance and in that event the claim for reimbursement could also have been made within time. It has further been held that there was no explanation for the appellant not making the claim for reimbursement of excise duty on the respondents earlier.

5. Being of the view that the Government ought to be a model litigant and ought not to take the technical pleas of limitation, we had on 11th November, 2011 while issuing notice of the appeal asked the counsel for the respondents to look into the records to verify whether besides the ground of limitation there is any other reason for denial of such reimbursement of excise duty to the appellant.

6. The counsel for the respondents has today, very fairly stated before us on the basis of the records that under the contract the excise duty was to be borne by the respondents and/or was reimbursable to the appellant and that besides the plea of limitation, there is no other defence to the claim of the appellant. It is however stated that upon the appellant intimating to the respondents of being required as a pre-condition for hearing of his appeal, to deposit the excise duty before the CEGAT, it was informed that it should after deposit, furnish proof of such deposit to the respondents so that the amount could be reimbursed to him. It is stated that the appellant did not do so.

7. We are of the view that merely because the appellant, being hopeful of succeeding in the appeal, did not at that time choose to claim the amount so deposited by it and which would have become refundable by the appellant in the event of the appeal preferred by the appellant succeeding, cannot deprive the appellant from the said claim, when the liability for excise duty has attained finality. Rather it appears that the appellant fought the claim for excise duty all these years at its own cost and expense, to save such liability to the respondents. It was open to the appellant to either during the performance of the contract itself pay the excise duty and claim reimbursement thereof from the respondents or to pay up the same when the notice to show cause was issued to it. The appellant instead chose to litigate in the interest of the respondents and ought not to be made to suffer therefor.

8. As far as the plea of limitation is concerned, the Supreme court as far back as in *Madras Port Trust v. Hymanshu International* (1979) 4 SCC 176 held that the plea of limitation is one which the Court always looks upon with disfavour and observed that it is unfortunate that a public authority like the Port Trust should in all morality and justice take up such a plea to defeat a just claim of the citizen. It was further observed that it is high time that Government and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizen particularly when the claim is well founded. The appellant herein is a sole proprietary and thus is in the position of a citizen only. Reference in this regard may also be made to

(i) *Maimoona Khatun Vs. State of Uttar Pradesh* AIR 1980 SC 1773, (ii) *CST v. Auriaya Chamber of Commerce* (1986) 3 SCC 50, (iii) *Salonah Tea Co. Ltd. v. Supdt. of Taxes* AIR 1990 SC 772, (iv) *K. Rudrappa v. Shivappa* AIR 2004 SC 4346 & (v) *Urban Improvement Trust, Bikaner v. Mohan Lal* (2010) 1 SCC 512 all holding, that the plea of limitation ought not to be used to defeat legitimate claims.

9. There is another aspect of the matter. The defence of limitation even otherwise is not unambiguous. If the claim for excise duty was *sub judice* till the year 2009, it will need adjudication if at all the claim therefor can be said to have become barred by time. The possibility of the respondents, had the appellant prior thereto made a claim, contending that the appellant was not entitled thereto since it was itself disputing the same, cannot be ruled out. In the facts and circumstances and legal position aforesaid, however need is not felt to relegate the parties to lengthy costly proceedings in this regard when the litigation Policy announced by the government also from time to time is against encouraging litigation.

10. As far as the aspect of delay is concerned, it is not as if the appellant is claiming any benefit thereof. Even if there were any delay on the part of the appellant in pursuing the claim it is the appellant who is the sufferer. The counsel for the appellant has clarified that the appellant is not claiming any interest.

11. We therefore allow this appeal; the rejection by the respondents of the claim of the appellant for reimbursement of excise duty and the orders of the learned Single Judge are set aside. The respondents are directed to, within eight weeks of today, after satisfying themselves of the appellant having paid the excise duty, reimburse the same to the appellant. For delay if any beyond eight weeks in such reimbursement, the appellant shall be entitled to interest @ 10% per annum.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

DECEMBER 8, 2011

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