IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19673 of 1996

Date of Decision: 3.9.2015

M/s Gupta Steel Rolling Mills, Mandi Gobindgarh

....Petitioner.

Versus

Union of India and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**
**HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Sandeep Moudgil, Advocate for the petitioner.

Mr. Sunish Bindlish, Advocate for the respondents.

**AJAY KUMAR MITTAL, J.**

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the orders dated 22.1.1987 (Annexure P-2) passed by respondent No.4, dated 27.5.1987 (Annexure P-3) passed by respondent No.3 and dated 13.9.1996 (Annexure P-4) passed by the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (in short “the Tribunal”) and to direct the respondents to refund the amount of excise duty along with interest thereon.

2. A few relevant facts necessary for adjudication of the present petition as narrated therein may be noticed. The petitioner had paid the excise duty on iron and steel products made of steel ingots amounting to ₹ 1,03,670.60 in terms of notification No. 206/63. Since no duty was liable to be paid on such products, the petitioner applied for

refund, the details of which are as under:-

i) Refund claim of Rs.41,161.33 pertaining to the period 22.4.1972 to 7.7.1972;

ii) Refund claim of Rs.26399.87 paise pertaining to the period of 1.8.1972 to 31.3.1973;

iii) Refund claim for Rs.36109.50 paise pertaining to the period of 1.7.1973 to 26.2.1974.

3. Respondent No.4 decided the refund claim as under:-

> "5. I have gone through the records of the refund claim of the party carefully and find that an amount of Rs.2189.35 sanctioned by the then Assistant Collector, Central Excise, Patiala is admissible to the party out of the Ist claim for Rs.41,161.23 (Rs.9,938.61 already paid) and out of the refund claim, an amount of Rs.29,033.27 is not admissible being time barred under Rule 11 of the Central Excise Rules, 1944, as the claim pertained to the period 22.7.72 to 7.6.72 and was received on 4.6.73. Accordingly, Rs.1905.43 were also not admissible out of 3$^{rd}$ claim for Rs.36,109.50 as this part of duty was paid on flats which is not admissible under Notification No. 206/63 (Rs.34,204.07 already paid). The refund for 2$^{nd}$ claim has already been paid in full.

4. Feeling dissatisfied, the petitioner filed an appeal before respondent No.3 who vide order dated 27.5.1987 (Annexure P-3) dismissed the appeal. It was recorded as under:-

> "1. This appeal has been filed against order C.No.

V(26AA)18/37/74/108-110, dated 22.1.87 of the Assistant Collector Central Excise Patiala. In the impugned order, the Assistant Collector rejected the refund claim of Rs.29033.27 and Rs.1905.43 on the ground that the claims were time barred under Rule 11 of the C.E. Rules, 1944. The appellant's contention is that initially, the Appellate Collector had given the benefit of Notification No. 206/63 and the Assistant Collector had no authority to reject the claim as time barred. The second plea taken by the appellant was that their case was not covered under Rule 11. The scope of Rule 11 was restricted to claims of refund arising out of duties or charges paid through inadvertence error or misconstruction whereas the appellant's case is a case of payment of duty under mistake of law and as such their case was not governed under Rule 11 but was to be governed under the Central law of limitation.

2. I have gone through the facts of the case, grounds of appeal and the submissions made by the counsel Shri G.S. Bhangoo, during the personal hearing. I observe that none of the pleas taken by the appellant has any force. The matter of sanction of refund as per the directive of the Collector (Appeals) was considered by the Assistant Collector who has given a finding that the claims were time barred. Further, it would be wrong to state that the appellant's

> case is not covered under Rule 11. It is clearly a case covered under 'misconstruction'. It would not be correct to hold that inadvertence error or misconstruction related to clerical or arithmatical error only. I, therefore, do not find any merit in the appeal and the same is hereby rejected."

5. Further, the petitioner preferred an appeal against the order, Annexure P-3, which was dismissed by respondent No.2 vide order dated 13.9.1996 (Annexure P-4). Hence, the present writ petition.

6. Learned counsel for the petitioner relying upon the judgment of Bombay High Court in **Shalimar Textile Mfg. Pvt. Limited v. Union of India and others 1986 (25) ELT 625 (Bom.)** submitted that the law of limitation would not govern the claim of refund when the duty paid was under the mistake of law and as such the duty recovered would be without authority of law.

7. Opposing the prayer of the petitioner, learned counsel for the revenue relied upon the judgment of the Apex Court in **Porcelain Electrical Mfg. Co. v. Collector of C. Ex., New Delhi 1998 (98) ELT 583 (SC)** to contend that the refund claim would be governed by the time limit provided under the statute and not by general law of limitation when the refund claim is filed before the departmental authorities.

8. After hearing learned counsel for the parties and perusing the record, we find merit in the contention of the learned counsel for the revenue. Rule 11 of the Central Excise Rules, 1944 (in short "1944 Rules") prevailing prior to 1.6.1977 reads thus:-

> "No duties or charges which have been paid or have been adjusted in an account current maintained with

> the Collector under Rule 9, and of which repayment wholly or in part is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be refunded unless the claimant makes an application for such refund under his signatures and lodges it with officer within three months from the date of such payment or adjustment, as the case may be.”

9. Under Rule 11, where a claimant had deposited any duty or charge under a misconstruction was required to lodge his claim for refund under his signatures with the concerned officer within three months from the date of such payment.

10. Rule 173J of the 1944 Rules at the relevant time prescribed time limit for recovery of short levy or refund of excess levy wherein it had been stipulated that the provisions of Rules 10 and 11 shall apply to the assessee and for the expression 'three months' in these rules, the expression 'one year' shall stand substituted. Thus, a claim for refund under Rule 173J of the 1944 Rules was required to be made within the statutory period of one year provided thereunder.

11. Dealing with Rule 11 and Rule 173J of the 1944 Rules, the Apex Court in **Porcelain Electrical Mfg. Co's case (supra)**, has held that where a claimant had filed an application under Rule 11 read with Rule 173J of the 1944 Rules and sought its remedies under the Statute, it would be bound by the limitation provided under the Act and the Rules. The relevant observations read thus:-

> “3. In challenging the order of the Tribunal the learned counsel for the appellant urged that the duty

having been paid under mistake of law, the period of limitation applicable was three years. Reliance is placed on Commissioner of Sales Tax, U.P. v. Auriaya Chamber of Commerce, Allahabad, 1986 (25) ELT 867, D. Cawasji & Co. & others v. State of Mysore & Anr., 1978 (2) ELT (J 154) and English Electric Co. (supra). None of these decisions appear to be helpful. The decisions were rendered in cases in which the assessee had sought its remedy by way of invoking extraordinary jurisdiction of the High Court or this Court and it was in those cases that the Court held that the period of limitation was three years.

4. In our opinion, the controversy stands concluded by the decision of this Court in Collector of Central Excise, Chandigarh v. M/s Doaba Co-operative Sugar Mills Ltd., Jaandhar, 1988 (37) ELT 478 (SC) = 1988 Supp. SCC 683.The relevant observations are extracted below:

> "But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act."

5. Since the appellant had filed an application under Rule 11 read with Rule 173J and sought its

> remedy under the statute, it was bound by the limitation provided under the Act and the Rules. It was not open to the appellant to claim that even though the period of limitation was provided under the statute for refund, the application filed by it should be processed and considered under the general law of limitation."

12. The application for refund of duty paid for the period in question was lodged on 4.6.1973 which was clearly beyond the period of three months from the date of payment of the said duty as required under Rule 11 of the 1944 Rules. The petitioner was, therefore, not entitled to any refund in terms of Rule 11 of the 1944 Rules.

13. The claim of the petitioner under Rule 173J of the 1944 Rules has also been refuted in the written statement as under:-

> "2. That as regards the contention of the petitioner regarding the applicability of Rule 173J instead of Rule 11 and its consequential claim for availability of a period of limitation of one year, the kind attention of this Hon'ble Court is invited to the finding of fact recorded by the Ld. Tribunal wherein it has been held that the petitioner had not been able to produce the relevant information with regard to the details of the clearances effected within time even if one year time is to be accounted. Even the said finding has not been assailed by the petitioner in the present CWP. Therefore, assuming though denying that Rule 173J was applicable to the present case even then the

petitioner is barred from claiming the benefit of the limitation period of one year in view of the aforesaid findings of the Ld. Tribunal."

14. No material could be referred to by learned counsel for the petitioner to controvert the aforesaid submission. Thus, we do not find any merit in the claim of the petitioner under Rule 173J of the 1944 Rules also.

15. Adverting to the judgment of the Bombay High Court in **Shalimar Textile Mfg. Pvt. Ltd's case (supra)** suffice it to notice that it being contrary to the aforesaid authoritative pronouncement of the Apex Court in **Porcelain Electrical Mfg. Co's case (supra)**, cannot be held to be enunciating the legal proposition correctly.

16. In view of the above, finding no merit in the writ petition, the same is hereby dismissed.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**September 3, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**