Bombay High Court Suvidhe Ltd. vs Union Of India on 3 February, 1996
Equivalent citations: 1996 (82) ELT 177 Bom Bench: A Agarwal, V Datar
ORDER 1. Rule. By consent rule is made returnable forthwith. Heard parties.
2. Show cause notice issued by the Superintendent (Tech.) Central Excise to the
petitioner to show cause why the refund claim for Excise Duty and Redemption
fine paid in a sum of Rs. 14,07,410/- should be denied under Section 11B
of the Central Excise Rules and Act, 1944 (sic) is impugned in the present
petition. The aforesaid amount is deposited by the Petitioners not towards
Excise Duty but by way of deposit under Section 35F for availing the remedy
of an appeal. Appeal of the petitioners has been allowed by the Appellate
Tribunal by its Judgment and order passed on 30th of November, 1993 with
consequential relief. Petitioners' prayer for refund of the amount deposited
under Section 35F has not received a favourable response. On the contrary the
impugned show cause notice is issued why the amount deposited should not be
forfeited. In our judgment, the claim raised by the Department in the show
cause notice is thoroughly dishonest and baseless. In respect of a deposit made
under Section 35F, provisions of Section 11B can never be applicable. A deposit
under Section 35F is not a payment of Duty but only a pre-deposit for availing
the right of appeal. Such amount is bound to be refunded when the appeal is
allowed with consequential relief. 3. In respect of such a deposit the doctrine
of unjust enrichment will be inapplicable. In the circumstances, the petition
succeeds. The impugned show cause notice, which is annexed at Exhibit-F to
the petition, is quashed and the respondents are directed to forthwith refund
the aforesaid amount of Rs. 14,07,410/- along with interest thereon at the rate
of 15% p. a. from the date of the order of the Appellate Tribunal i.e. from
30th November, 1993 till payment. 4. Rule is made absolute in the aforestated
terms. Respondents will pay the petitioners the cost of the petition.