

Collector Of Central Excise, ... vs Doaba Co-Operative Sugar Mills ... on 16 August, 1988

Equivalent citations: 1988 AIR 2052, 1988 SCR SUPL. (2) 458, AIR 1988 SUPREME COURT 2052, (1988) 4 JT 28 (SC) 1988 SCC (SUPP) 683, 1988 SCC (SUPP) 683

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

COLLECTOR OF CENTRAL EXCISE, CHANDIGARH

Vs.

RESPONDENT:

DOABA CO-OPERATIVE SUGAR MILLS LTD., JALANDHAR

DATE OF JUDGMENT 16/08/1988

BENCH:

MUKHARJI, SABYASACHI (J)

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MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1988 AIR 2052 1988 SCR Supl. (2) 458

1988 SCC Supl. 683 JT 1988 (4) 28

1988 SCALE (2) 477

ACT:

Central Excises and Salt Act, 1944: Sections IIA, IIB, 35A(2) and 35L(b)- Excess production rebate- Erroneously granted- Show cause notice issued for recovery- Whether valid and permissible- Refund of duty recovered without authority of law- General law applicable- Refund claims before departmental authorities- Limitation provided under Customs/Central Excise Act and Rules thereunder applicable.

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Limitation Act, 1963 : Limitation- Corporation of- Duty levied without authority of law- General law applicable- Starting point- When mistake or error comes to light.

HEADNOTE:

The Superintendent of Central Excise issued a show cause notice on November 15, 1981 to the respondent for recovery of 'excess production' rebate erroneously granted under Notification No. 108/78. The Assistant Collector, however, on July 31, 1982 held that there was no excess Production because of wilful incorrect statement or suppression of facts and so held that the notice was barred by lapse of time and dropped the demand.

The Collector of Central Excise exercising powers under Section 35A(2) of the Central Excises and Salt Act, 1944 issued a review show cause notice on October 6, 1982 and adjudicated the case thereafter.

The Central Excise and Gold (Control) Appellate Tribunal having allowed the appeal of the respondent, the Revenue challenged the said order in this Court.

Dismissing the Appeal,

HELD: 1. Section IIA of the Act would come into operation only when the demand is on account of Central Excise duty short levied or not levied or refunded erroneously. The issue in the instant case, was not any of the said reasons. [460E]

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2. Where the duty has been levied without the authority of Law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general Law and the date of Limitation would be the starting point when the mistake or the error would come into light. [460F]

3. In making claims for refund before the departmental authority as assessee is bound within the 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 authority functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department the provisions of limitation prescribed in the Act will prevail. [460G]

4. It may, however, be open to the department to initiate proceedings in the Civil Court for recovery of the amount due to the department in case such a remedy is open on the ground that the money received by the assessee was not in the nature of refund. [460H]

Miles India Ltd. v. Assistant Collector of Customs, [1985] ECR 289 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 283 of 1988.

From the Order dated 9. 10. 1987 of the Customs Excise and Gold Control Appellate Tribunal, New Delhi in Appeal No. F-1744/83-D [Order No. 808/87-D).

M.K. Banerjee, Solicitor General? R.P. Srivastava and Mrs. Sushma Suri for the Appellant.

M.G. Ramachandran for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is a statutory appeal against the decision of the Customs, Excise and Gold (Control) Appel-late Tribunal, under Section 35L(b) of the Central Excises & Salt Act, 1944 [hereinafter called 'the Act').

A sum of Rs.5,60,679.40 was sanctioned to the respondent on the basis of Notification No. 108/78 as an incentive for excess production. On 18.5.1979, the said sum was credited to the Personal Ledger Account of the dealer. On 5th November, 1981, the Superintendent of Central Excise issued a show cause notice asking the respondent to show-cause as to why the sum of Rs.66,306.62, granted in excess under the aforesaid notification, be not recovered from it. On 31.7.1982, the Asstt. Collector, however, held that there was no excess production because of wilful incorrect statement or suppression of facts by the respondent. In the premises, he held that the notice was barred by lapse of time according to the statute and, accordingly, dropped the demand.

On 6th October, 1982, the Collector of Central Excise, Chandigarh, while exercising his power under Section 25A(2) of the Act as it stood at the material time, issued a review show-cause notice against the order of the Asstt. Collector. The case was adjudicated thereafter by the Collector who found that the statutory time limit under Section 111 of the Act would come into play only where the demand is on account of the central excise duty short levied or not levied or refunded erroneously .

Aggrieved thereby, on or about 9th October, 1987, the respondent preferred an appeal before the Tribunal. The Tribunal allowed the appeal. The propriety of. the said decision is being sought to be challenged in this appeal. It appears that Section 11 of the Act would come into operation only when the demand is on account of central excise duty short levied or not levied or refunded erroneously. In the instant case the issue was not for any of the said reasons. It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the Act and the Rules framed thereunder have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. 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. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the act will prevail. It may, however; be open to the department to initiate proceedings in the Civil Court for recovery of the amount PG NO 461 due to the department in case when such a remedy is open on the ground that the money received by the assessee was not in the nature of refund. -This was the view taken by the Tribunal in a previous decision .in the case of Miles India Ltd. v. The Asstt. Collector of Customs, but it was assailed before this Court. The appeal was withdrawn. This Court observed that the

Customs Authorities, acting under the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor in the relevant provisions of the Customs Act., 1962. If really the payment of the duty was under a mistake of law, the party might seek recourse to such alternative remedy as it might be advised. See the observations of this Court in *Miles India Ltd. v. The Assistant Collector of Customs*, [1985] E.C.R. 289.

In the aforesaid view of the matter the Tribunal was right. The appeal, therefore, has no merits and it is accordingly not entertained and dismissed. There is no order as to costs.

N.V.K.

Appeal dismissed.