

Supreme Court of India

Oswal Agro Mills Ltd. And Anr. vs Asstt. Collector Of Central ... on 26 November, 1993

Equivalent citations: 1994 (73) ELT 521 SC, 1995 Supp (3) SCC 65

Bench: Y Dayal, S Bharucha

ORDER Yogeshwar Dayal and S.P Bharucha, JJ.

Hard learned counsel for the parties.

1. There was a dispute between the appellants before us and the Excise Department as to whether the goods under dispute were liable under Tariff Item 15(1) or 15(2) of the Central Excises and Salt Act, 1944, as amended.

2. The Supreme Court upheld the submission of the appellant that the appellant is liable to pay excise duty under Item 15(1) and repelled the contention of the Revenue that it was payable under Item 15(2).

3. It appears that the aforesaid appeal was filed by the appellants against the decision of the Tribunal which had taken the contrary view. When the appeal was filed an interim order was passed that 50% of the dues be paid in cash and for remaining 50% bank guarantees may be furnished and they were to be kept alive till the decision of the appeal. The appeal itself was decided on 27-4-1993.

4. The appellants having succeeded before this Court moved the authorities for refund of the excess amount deposited in pursuance of interim order of this Court. It appears the authorities had not entertained the appellants' plea for refund and the appellants moved the High Court of Punjab and Haryana for writ of Mandamus directing the Revenue authorities to decide the application for refund. The High Court directed the authorities to consider the application of the appellants on merits for refund. At the same time, the High Court directed "the petitioners are directed to get the bank guarantees extended till the final disposal of the claim for refund." It is against the afore said directions of the High Court that the appellants have come to this Court.

5. It may be noticed that so far as the disputed assessment is concerned, it has become final by an order of this Court holding that the excise duty was payable under Tariff Item No. 15(1) and not under 15(2). Therefore, apparently, the appellants have deposited at least 50% over and above the claim of the Revenue by way of interim order of this Court and the balance was secured by way of bank guarantees. Keeping the bank guarantees alive or extended, the direction for furnishing bank guarantees is not subject matter of the application for refund pending before the authorities. We are informed by the learned Counsel for the appellants that treating the bank guarantees as if it is deposited in favour of the Revenue, the Revenue already in view of the orders of the High Court encashed the bank guarantees. We find behavior of the excise department highly improper. Bank guarantees are furnished to secure interest of the parties till determination of matters pending before the court. No bank guarantees can be encashed till the decision of the court. This Court having once decided the appeal on merits the bank guarantees of their own should expire and lapse. The Revenue authorities had no powers to use their executive power to get such bank guarantees encashed through bank. If Bank guarantee has been encashed, we direct to the Collector of Central

Excise/Assistant Collector of Central Excise, Ludhiana Division to refund the money so collected from the bank to the bank concerned forthwith. The appeal is allowed with no costs.