Suvidhe Ltd. Vs. Union of India

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Court : Mumbai

Decided On : Feb-03-1996

Reported in : 1996(82)ELT177(Bom)

Judge : Ashok Agarwal and ;V.R Datar, JJ.

Appeal No. : Writ Petition No. 5041/95

Appellant : Suvidhe Ltd.

Respondent : Union of India

Advocate for Def. : Mr. V.G. Rege, Adv.

Advocate for Pet/Ap. : Mr. D.B. Shroff, ;Mr. G.R. Joshi, ;Mr. H.N. Vakil, Advs. i/b., ;M/s. Mulla & ;Mulla & ;Cragie Blunt & ;Caroe

Judgement :
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.