

Goldstone Engineering Ltd. Vs. Union of India (Uoi)

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Court : Andhra Pradesh

Decided On : Apr-13-2004

Reported in : 2005(124)LC48(AP)

Judge : Motilal B. Nath and ;Dalava Subrahmanyam, JJ.

Appeal No. : Writ Petition No. 25233 of 1998

Appellant : Goldstone Engineering Ltd.

Respondent : Union of India (Uoi)

Disposition : petition allowed

Judgement :

Motilal B. Naik, J.

1. Petitioner is a company incorporated under the provisions of the Indian Companies Act, 1956 having its Registered Office at Secunderabad. According to the petitioner, the company is carrying on the activity of putting together duty paid manufactured articles into a container like carton, which is popularly known as 'Cable Jointing Kit' by the Department of Communications (DoT) and Mahanagar Telephone Nigam Limited (MTNL).

2. While so, the respondents insisted the petitioner to pay excise duty considering the activity undertaken by the petitioner as to the manufacturing activity. Despite

the petitioner bringing it to the notice of the customs authority that the activity is not manufacturing activity, insisted payment of customs duty to the tune of Rs. 4,16,94,031/-, Under compelled circumstances, the petitioner paid the duty under protest.

3. The petitioner later moved this Court by way of Writ Petition No. 5048 of 1998 seeking a direction to declare that the respondents are not entitled to levy and collect excise duty on the activity undertaken by the petitioner. The matter was contested and this Court while disposing of the Writ Petition by an order dated 27.2.1998 declared that the activity undertaken by the petitioner is not a manufacturing activity and these goods are not taxable goods.

4. Basing on the judgment of this Court, petitioner claims to have filed an application before the Assistant Commissioner of Customs seeking refund of the amounts. The Assistant Commissioner of Customs by an order dated 6.5.1998 seems to have rejected the application. The matter was carried before the appellate authority. The Appellate Authority by an order dated 20.7.1998 granted refund of Rs. 2,35,36,946/-, but however, refused to grant interest on this amount. It is in this background, the present Writ Petition is filed seeking an appropriate direction from this Court directing the respondents to grant refund to the petitioner.

5. On behalf of the respondents a detailed counter has been filed, inter alia, bringing to the notice of the Court, the provisions governing the grant of refund, from Sections 11B to 11BB, would amply demonstrate that the petitioner is not entitled to seek refund.

6. Counsel for the petitioner mainly contended that an amount of Rs. 4,16,96,031/- was collected by the Department under protest for the clearance of cable jointing kits effected from November 1996 to October 1997, matter had reached such a stage that the Hon'ble High Court declared the activity undertaken by the petitioner is not taxable and thereupon, appropriate representation was moved by the petitioner seeking refund as well as interest. Counsel stated the respondents under one pretext or the other have been denying the interest on the deposits made under protest from November 1996 to October 1997 without any justifying reasons. Counsel also stated while drawing our attention to the provisions of the

Act, that when excise duty is collected under protest, provisions under Section 11B would not apply and pleaded issuance of appropriate directions.

7. In support of his contentions, he relied on decisions reported in Redihot Electricals v. Union of India : 1989(43)ELT253(Del) and Union of India v. Metal Distributors Limited : 1993ECR343(Bombay) .

8. The learned Standing Counsel on the contrary stated according to the scheme of the Act, interest is not payable if the refund is ordered within three months from the date of application. Counsel stated that after the judgment rendered by this Court an application was filed and thereafter, refund was ordered within three months as such respondents are not liable to pay interest to the petitioner.

9. In the light of these submissions made by the learned Counsel for the petitioner as well as the learned Standing Counsel for the respondent, we now propose to examine certain provisions of the Act. Section 11B of the Central Excise Act, 1944 reads as follows:

11B. (1) Any person claiming refund of any duty of excise may make an application for refund of such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise.

Proviso to Section would say provided further that the limitation of one year shall not apply where any duty has been paid under protest. A further reading of Sub-section (2) of Section 11B which deals with 'relevant date' with regard to claim of refund. Clause (1) of (B) would further say in any other case, the date of payment of duty which is relevant for the purpose of claiming interest.

Section 11BB reads under:

If any duty ordered to be refunded under Sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under Sub-section (1) of that Section, there shall be paid to that applicant interest at such rate, not below ten per cent, and not exceeding thirty per cent, per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date immediately after the expiry of three

months from the date of receipt of such application till the date of refund of such duty.

10. A combined reading of these provisions, in our considered view, though it could be said as stated by the learned Standing Counsel for the Central Government, the second proviso to Section 11B is applicable to only limitation aspect. However, the provision under Clause (f) of Sub-section (2) of Section 11B would say the relevant date and as such, we are convinced that the claim of the petitioner would fall within Clause (f) of Sub-section (2) of Section 11B and therefore, the petitioner shall be entitled to get interest from the date on which the duty is paid under protest. It is to be examined that the petitioner was not liable to pay duty but however, on the insistence by the Department, paid duty under protest. Therefore, these provisions cannot be construed to apply to the duty paid under protest and deny the petitioner interest on the amounts so collected by the Department.

11. The learned Standing Counsel relied on a judgment of the Supreme Court reported in *Mafatlal Industries Limited v. Union of India* : 1997(89)ELT247(SC) and stated that the petitioner is not entitled to claim interest on refund amount. We think the ratio relied on by the Supreme Court is not applicable to the facts of this case, as discussed by us, this is a case of post-payment duty and therefore, the petitioner is legally entitled to seek interest on such payment.

12. It is well-settled that while interpreting a statute as to the benefit to be given either to the State or to a citizen, courts have held the statute has to be interpreted in favour of the citizen when the litigation is between the mighty State and the subject. In this case, admittedly the action of the respondents has been declared as illegal by the Division Bench of this Court holding that the activity undertaken by the petitioner does not fall within the ambit of manufacturing activity and the goods are not taxable. That, being so, the respondents though insisted the petitioner to pay huge sums of more than 4 crores, that action, in our considered view, is a forced action and therefore, the petitioner cannot be denied interest on the amounts which are directed to be refunded from the dates of its deposit. We declare that the petitioner is entitled for the interest on the amount of Rs.

2,35,36,936/- from the date of payment made to the respondent under protest.

Accordingly, the writ petition is allowed. No costs.

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the Thirteenth day of April Two Thousand and Four.

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