IN THE SUPREME COURT OF INDIA
Civil Appeal Nos. 5268 OF 2003
M/s GRASIM INDUSTRIES LTD
Vs
COMMISSIONER OF CENTRAL EXCISE, BHOPAL

Mukundakam Sharma and Anil R Dave JJ

Dated: August 18, 2011

Appellant Rep by: Ms. Suruchii Aggarwal , Adv.
Respondent Rep by: Mr. Krishan Kumar, Adv. Ms. Arti Singh, Adv. Mr. B K Prasad, Adv. Mr. P Parmeswaran , Adv.

JUDGEMENT

1. By this judgment and order, we propose to dispose of this appeal, which is filed by the appellant being aggrieved by the judgment and order dated 18.02.2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as the 'Tribunal') affirming the order dated 03.12.2001 passed by the Commissioner (Appeals) and the order of the Assistant Commissioner, who had passed the order in original.

2. Counsel appearing for the appellant has submitted before us that the respondent could not have issued a show cause notice to the appellant demanding recovery of the amount which was paid to the appellant by the respondent as refund of the duty paid bypassing the statutory provision.

3. The next contention which is raised before us is that the appellant had issued a credit note which was filed and, therefore, the refund which was given to the appellant by the Department should have been upheld by all the authorities.

4. The aforesaid submissions of the counsel appearing for the appellant were, however, refuted by the counsel appearing for therespondent , who has drawn our attention to the documents on record including the various orders passed by the authorities below as also the Tribunal. By relying on the provisions of Sections 11A , 11B and 12, he has submitted before us that the orders passed by all the authorities including the Tribunal are just and proper .

5. In the light of the aforesaid submissions made by the counsel appearing for the parties, the issue that arises for our consideration is whether the appellant can be said to be eligible for refund of the duty claimed by it in terms of Section 11B of the Central Excise & Salt Act, 1944.

6. The appellant herein deposited duty on clearance of Sodium Hypochlorite (Bleach Liquor) for the period from 01.03.1988 to 15.06.1989 vide TR -6 dated 19.07.1989.

Subsequent thereto, on 28.11.1990, a refund claim was filed by the appellant. The aforesaid claim was allowed by the Assistant Commissioner by a letter dated 22.09.1992 by the following order:

"Please find enclosed herewith a cheque No. A16835269 dated 22-9-92 for Rs.2 ,00,305 /- (Rupees Two Lacs Three Hundred and five) only in finalization of your Refund claim. That the payment will be received within three months from the date of issue of cheque drawn on Central Bank of India, Branch Ratlam .

Please send acknowledgment receipt for the cheque ."

7. Since according to the respondent, the said claim was wrongly sanctioned by the Assistant Commissioner, a show cause notice dated 15.03.1993 was issued stating therein that the refund given to the appellant by the Assistant Commissioner was without jurisdiction as refund is admissible only when incidence of central excise duty was not passed on to other persons. In the said show cause notice, a reference was also made that buyer in the case was M/s. Grasim Industries Ltd., Staple Fibre Division, Nagda and, therefore, central excise duty was initially passed on to Staple Fibre Division. It was also stated that a credit note was issued on 07.08.1991 for Rs.2 ,00,305 /- and since the same was claimed at a much later stage, it would not establish that the initial central excise duty incidence was not passed on.

8. After reply to the show cause notice was filed, the matter was considered by the Assistant Commissioner, who passed the order in original holding that the refund order was passed illegally and without jurisdiction .

9. In view of the aforesaid findings, it was ordered that the amount of Rs.2 ,00,305 /- which was erroneously refunded be recovered from the appellant in terms of Section 11A of Central Excise and Salt Act, 1944.

10. The aforesaid order was challenged by filing an appeal before the Commissioner (Appeals), who upheld the order of the Assistant Commissioner and the said order when challenged before the Tribunal was heard at length. The Tribunal by order dated 18.02.2003, dismissed the appeal and upheld the findings recorded by the Commissioner (Appeals) as also by the Assistant Commissioner, who passed the order in original.

11. The facts which are indicated herein-before would indicate that on the date when the appellant filed an application seeking claim for refund of the amount i.e. on 28.11.1990, there was no credit note issued, which was issued much subsequently i.e. on07.08.1991 . The duty was deposited on 19.07.1989 whereas the aforesaid credit note is dated 07.08.1991. But the claim appears to have been filed before the Assistant Commissioner seeking for refund on 28.11.1990 i.e. prior to even issuance of the aforesaid credit note. However, the Assistant Commissioner initially issued letter dated 22.09.1992 without considering even the merit of claim and without even considering applicability of Sections 11 and 12 of the Act.

12. Subsequently, the Assistant Commissioner again considered the records and in his order has also referred to the admission of the appellant to the fact that the burden of the said duty was originally passed on from Chemical Division to Staple Fibre Division. The refund application was not filed by Staple Fibre Division of Grasim Industries Ltd. in this case but the same is filed by the present appellant, who is another division.

13. Section 11A provides for a right of issuance of show cause notice, if, according to the Department, duty of excise has been erroneously refunded to a party. In the event of such erroneous refund of excise duty, the competent authority may then issue such a show cause notice as provided for under Section 11A , in which case the assessee has to show cause as to why the aforesaid amount of refund, which is erroneously refunded, should not be recovered from him. In such a case, there is no question of filing any appeal, as appropriate remedy as provided under Section 11A is available.

14. Therefore, in our considered opinion, the first contention of the counsel appearing for the appellant has no merit.

15. So far as the issuance of the credit note is concerned, the same was issued only on 07.08.1991 although the duty was paid on 19.07.1989 and, therefore, the credit note was issued after two years of the payment of the duty and the clearance of the goods. In this connection, Section 12 of the Central Excise Act becomes relevant which indicates that the party who is liable to pay excise duty on any goods, has to file the sales invoice and other documents relating to assessment at the time of clearance of the goods itself. Therefore, when at the time of clearance no such document was filed and what is sought to be relied upon is a document issued after two years, the same raises a doubt and cannot be accepted as a reliable document.

16. In that view of the matter, we are of the considered opinion that the decision in the case of *Sangam Processors (Bhilwara) Ltd. Vs. CCE , Jaipur* - which was a decision of the Tribunal and also upheld by this Court becomes applicable as the appeal filed therefrom was dismissed. In our considered opinion the Tribunal did not commit any error in referring to and relying on the said decision.

17. The Tribunal, in our considered opinion, was also justified to rely on the decision of the Tribunal in *S.Kumar's Ltd. Vs. CCE , Indore* in which reference was also made to the decision of the Supreme Court in Kunhay Ammed & Ors . Vs. State of Kerala reported in (2000) 6 SCC 359 - wherein the question of merger as well as binding nature of the decision of the Supreme Court as precedence when civil appeals and special leave petitions are dismissed was considered.

18. Considering the facts and circumstances of the case, we find no infirmity in the order passed by the Tribunal. The appeal has no merit and is dismissed but leaving the parties to bear their own costs.