
(2015) 10 SC CK 0096

In the Supreme Court Of India

Case No : Civil Appeal No. 5284 of 2007

Addl. Dir. General, Dte. General of Central Excise

APPELLANT

Vs

Kiran Machines

RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35

Civil Procedure Code, 1908 (CPC) — Order 39 Rules 1, Order 39 Rules 2, 9

Constitution of India, 1950 — Article 227

Citation : (2015) 325 ELT 469

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : K. Radhakrishnan, Sr. Advocate, Atulesh Kumar, Nisha Bagchi, Pooja Sharma and B. Krishna Prasad, Advocates, for the Appellant

Final Decision : Disposed Of

Judgement

1. A show cause notice dated 28-5-2001 was issued by the Appellant i.e. The Additional Director General, Directorate General of Central Excise to Respondent No. 1 proposing to recover a sum of Rs. 27.32 lacs. This notice was issued under the provisions of the Central Excise Act. Instead of replying to the said notice, Respondent No. 1 filed suit before the City Civil Court, Chennai challenging the validity of the said show cause notice on various grounds. Along with the suit, application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 was also filed seeking interim injunction to restrain the Central Excise officials to adjudicate on the aforesaid show cause notice. The said suit was decreed ex parte vide order dated 9-8-2001 by the Trial Court. Against the said ex parte decree, the Appellant filed revision petition invoking the provisions of Article 227 of the Constitution. The plea of the Appellant was that the Civil Court did not have the jurisdiction to entertain such a suit which was predicated on two grounds viz. (1) the jurisdiction of Civil Court was impliedly barred under Section 9 of the Code of Civil Procedure inasmuch as the Central Excise Act provides for complete machinery for adjudication of such disputes. (2) The suit filed against

the show cause notice was premature and there was no cause of action to file such a suit when the said show cause notice was yet to be adjudicated upon. The High Court vide the impugned order dated 23-12-2005 The Assistant Commissioner of Central Excise and The Commissioner of Central Excise Vs. Diamond Engineering (Chennai) Private Limited, has not decided the aforesaid contentions of the Appellant on merits. Instead, it has remanded the case back to the Trial Court with a direction to frame a specific issue on jurisdiction and decide the same after affording reasonable opportunity to both the parties. This order of the High Court is the subject matter of the present appeal. Though the Respondents were served, no one has put any appearance. In these circumstances, we have no option but to hear Mr. Radhakrishnan, learned Senior Counsel appearing for the Appellant alone.

2. We have gone through the subject matter of the dispute which was raised in the Civil Suit filed by Respondent No. 1. After going through the same, we are in agreement with the submissions of Mr. Radhakrishnan on both the counts as mentioned above. The Appellant had simply issued the show cause notice to Respondent No. 1. This notice has been issued under the provisions of Central Excise Act. The validity of such a show cause notice could not be gone into in a suit filed by the notice. As rightly pointed out by Mr. Radhakrishnan, various provisions of the Central Excise Act provide for complete machinery for adjudication of such show cause notice. Opportunity was given to Respondent No. 1 to reply to the said show cause notice. After grant of hearing, the adjudicating authority was supposed to pass the order on the show cause notice. There is a provision in challenging such an order by filing appeal. In this scenario, we are of the opinion that the jurisdiction of the Civil Court is clearly barred Under Section 9 of the Code of Civil Procedure on the principles laid down by this Court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, wherein this Court inter alia held as under:

"32. Neither of the two cases of *Firm of Illuri Subayya (1)* or *Kamla Mills (2)* can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the

scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund" of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

3. Section 35(c)(iv) of the Central Excise Act specifically provides that orders passed by the Appellate Tribunal on appeal shall be final. Even otherwise, when the matter was still at the show cause notice stage and no adverse order has been passed against Respondent No. 1, there was no cause of action to file such a suit. We, thus, set aside the impugned order of the High Court. As a consequence two suits filed by Respondent No. 1 are also dismissed. The appeal is, accordingly, allowed.