(1981) 12 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 584

Ajanta Paper Products APPELLANT

Vs

Collector of Central Excise and Another RESPONDENT

Date of Decision : 03-12-1981

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 173B
Central Excises and Salt Act, 1944 — Section 11A
General Clauses Act, 1897 — Section 6

Citation : (1982) 10 ELT 201

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The petitioner is engaged in the business of printing of tissue paper on one side with colour. It appears that the petitioner used to file a classification list of the excisable goods made by it under Rule 173-B of the Central Excise Rules, hereafter referred to as ''the Rules''. The petitioner has filed the classification lists for the years 1976 and 1979 as Annexures 1 and 2 to the writ petition. At Item 3 dyed tissue paper was shown to be nil. Similar is the position in 1979. The petitioner has averred that the same situation prevailed in the intervening and other years. On the 8th of August, 1980, the petitioner received a notice purporting to be under Rule 10(a) of the Rules. The notice directed the petitioner to show cause as to why he should not be required to pay excise duty on coloured tissue paper for the period from August, 1976 to June, 1980. The petitioner in response to the notice, sent a detailed reply on the 16th August, 1980. It transpires that a letter concerning the same matter was sent to the petitioner by the Department on the 1st of September, 1980, and the petitioner sent a short reply to this also. On behalf of the Excise Department it has been denied that the petitioner sent a reply to the show-cause notice of the 8th August, 1980. On the view that we propose to take, it is not necessary to decide as to whether the petitioner had, in fact, sent a reply to the show cause notice. Counsel for the petitioner has challenged the show-cause notice dated 8th of August, 1980, issued under Rule 10 and the subsequent proposed action thereon, on a number of grounds. In the first place it has been contended that inasmuch as Rule 10 has been omitted by Notification No. 177/80-C.E., dated 12th November, 1980, which came into effect from the 17th November, 1980 no further proceedings pursuant to the notice can be taken as the notice had lapsed in the eye of law. It has also been contended that the notice in so far as it makes a demand or duty for a period exceeding six months from the date of its issue is barred ''by time. It was also urged that so far as dyed tissue paper is concerned, it is exempt from tax under Notification No. 68/76, dated 16-3-76. As we are of the view that the first contention deserves acceptance, it is not necessary to express any view on the others. Rule 10 of the Rules was omitted by the Notification of the 12th November, 1980 which came into effect from the 17th November, 1980. On this very date Section 11A which had been inserted in the Central Excise Act was enforced. Section 11A is in part materia with Rule 10 of the Rules. The amending Act which brought Section 11A on the statute book did not contain any provision to the effect that proceedings pending under Rule 10 on the date whom the aforesaid provision came into effect would be treated as proceedings under the section. The question arises as to whether proceedings pursuant to the notice dated 8th of August, 1980, issued under Rule 10 can be continued after the omission of these rules with effect from the 17th of November, 1980, and also as to whether the notice of the 8th August, 1980 lapsed with the omission of the Rule. We were, at one stage of the view that the proceedings could continue, but in view of the decision of the Supreme Court in the case of M/s Rayala Corporation (P) Ltd. v. The Director of Enforcement AIR 1970 SC 494 it has to be held that with the omission of Rule 10 the notice issued under that Rule will lapse and no proceedings under that provision can now be taken. The notification omitting Rule 10 did not contain any provision for continuance of the proceedings already initiated and neither did Act 25 of 1978, which introduced Section 11A of the Act adopt the legal device of creating a fiction by virtue of which proceedings under Rule 10, could be deemed to be proceedings u/s 11A of the Act. The Supreme Court in the case of Rayala Corporation (Supra) has held that Section 6 of the General Clauses Act does not apply to cases of omission, and further that it does not apply to the case of repeal of a Rule. Once help of Section 6 of the General Clauses Act is not available, proceedings under Rule 10 cannot be continued for, the provision under which they were taken no longer exists on the statute book.

2. Councel for the Department, however, urged that the Department had passed an order rejecting the claim of the petitioner on the 6th of October, 1980 (Annexure 5 to the counter-affidavit). This order appears to have been passed on the letter of the petitioner dated 18th September, 1980 which was sent by them in response to some communications sent by the Department on the 1st of September, 1980. It is not an order which was passed in the proceedings initiated by the show-cause notice of the 8th of August, 1980. Under Rule 10(2)

as it stood, the liability for excise duty after a show cause notice had been sent, arose only after objections to the show cause notice had been considered after affording the persons concerned a reasonable opportunity. This being so, the order of the 6th October, 1980 passed by the Deputy Collector (Audit) Central Excise, Kanpur, cannot be taken to be an order passed in proceedings taken in pursuance of the notice dated 8th of August, 1980. It was also pointed out to us that the order of the 6th October, 1980 (Annexure 5 to the counter-affidavit) is not an order addressed to the petitioner but is a communication sent to the Assistant Collector, Central Excise, Agra. There appears to be force in this contention for the communication is advisory in nature, and does not have the determinative character of an order passed in a quasi-judicial proceedings.

3. We, accordingly, allow the petition and quash the notice dated 8th August, 1980, and direct the respondents not to take any action on the basis of the aforesaid notice. We issue the same direction in respect of the notice dated 25th December, 1980 (Annexure 2) to the counter-affidavit which is a corrigendum of the show-cause notice dated 8th of August, 1980. There shall be no order as to costs. The security furnished under the interim order of this court is discharged.

