**(1988) 08 GUJ CK 0016**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 789 of 1987

Alembic Glass Industries Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 12-08-1988

**Acts Referred:**

Central Excises and Salt Act, 1944 — Section 11A

**Citation :** (1989) 23 ECR 222 : (1989) 43 ELT 16

**Hon'ble Judges :** P.M. Chauhan, J;A.M. Ahmadi, J

**Bench :** Division Bench

**Advocate :** Kamal B. Trivedi and Rakesh Gupta, of Trivedi, Gupta and Dave, for the Appellant; K.A. Mehta, Senior Standing Counsel, for the Central Government, for the Respondent

## Judgement

Ahmadi, J

1. Rule. Mrs. Mehta waives service of the rule on behalf of the respondents. By consent heard today.

2. After the petitioners'' classification list was approved by the department, three show cause notices were issued purporting to be u/s 11A of the Central Excises and Salt Act, 1944 (hereinafter called ''the Act''). The first notice was dated November 23, 1984 and covered the period from 1-1-1981 to 31-1-1983; the second notice was dated November 26, 1984 and covered the period from 1-2-83 to 31-10-1984 and the third notice was dated January 18, 1985 and covered the period from 1-11-1984 to 31-12-1984. These three notices have been produced at Annexures ''B'' and ''E'' to the petition. In all these three notices it is mentioned that the grounds on which the duty is proposed to be recovered have been set out in Annexure ''A'' to the show cause notice. Annexure ''A'' to all the three show cause notices is practically in identical terms and we are concerned with two paragraphs thereof which read as under :-

"It was stated in the clarification by the Ministry that a unit which produces ''glassware'' by ''mouth blown'' process is eligible to be assessed at the effective rate of duty prescribed in Notification No. 339/77 as amended. This is also admissible to such unit even if further finishing processes like ''cutting, annealing etc.'' is done with the aid of machine.

It will thus be actifious (sic) that the classification given by the Ministry extends the effective rate of duty (on basis of 329/77 as amended) only to plain glass and glassware, that underwent further finishing processes (with the aid of machine) after they are ''blown'' by ''mouth blown process''."

On receipt of the said show cause notices, the assessee sent a reply dated January 24, 1985, Annexure ''C'', stating that in order to enable the assessee to collectively reply to the said show cause notices, a copy of the clarification issued by the Ministry on the subject-matter involved in the show cause notices should be made available to it. Unfortunately, by letter dated April 9, 1985, Annexure ''D'', the Superintendent of Central Excise, informed the petitioners that the copy of the Ministry''s letter received by the department and referred to in the grounds, Annexure ''A'' to the show cause notices, could not be given to the assessee since it was merely in the nature of issuance of instructions to departmental officers. Thereafter the assessee showed cause and the impugned order Annexure ''F'' dated September 3, 1985 came to be passed by the Assistant Collector against which the petitioners preferred an appeal which came to be dismissed by the Collector of Central Excise (Appeals), Bombay by his impugned order dated February 6, 1987, Annexure ''G'' to the petition. It is seen from the order of the Assistant Collector that it was specifically contended that the principles of natural justice were violated by refusal to supply the copy of the Ministry''s clarification which was made the basis of the impugned show cause notices. Unfortunately the Assistant Collector did not deal with the contention presumably because of the earlier communication of April 9, 1985. Mr. Gupta also states that he had taken this contention in the memo of appeal but the same has not been dealt with by the Appellate Authority either. Be that as it may, a specific contention in this behalf is raised in Ground No. 6 of the petition in the following words :-

"It is pertinent to note that both the aforesaid impugned orders have been passed solely relying on the clarification/explanation issued by the 1st respondent. The petitioners had repeatedly made requests to get a copy of the said so called explanation/classification. In evidence thereof, letter written by the petitioners is also produced at Annexure ''C'' to this petition. However, the said explanation/clarification has not been made available to the petitioners on the ground that it was an inter departmental communication. The 5th respondent had informed the petitioners vide his letter dated 9-4-1985, produced at Annexure ''D'' that a copy of the said letter of the 1st respondent cannot be given to the petitioners as the same is for departmental purposes only."

The petitioners thereafter proceed to state that the failure on the part of the department to furnish the petitioners with the Ministry''s clarification which is referred to and relied upon in the annexure to the show notices and is also me the basis of the impugned orders has caused prejudice to the petitioners inasmuch as the petitioners were not able to effectively deal with the grounds projected against them. It is, therefore, complained that there has been violation of the principles of natural justice.

3. The impugned orders of the Assistant Collector and the Collector (Appeals), Bombay have also been challenged on certain other grounds but we think that the first ground referred to above is sufficient to quash both the orders of the revenue authorities. It is obvious from Annexure ''A'' to the show cause notices that the department has heavily relied upon the Ministry''s clarification. As pointed out above, the said clarification issued by the Ministry prompted the issuance of the show cause notices. Before answering the show cause notices the petitioners demanded a copy of the said clarification by letter, Annexure ''C'', dated January 24, 1985 but unfortunately the same was denied to them by the department''s letter dated April 9, 1985. If we turn to the impugned orders passed by the Assistant Collector as well as the Collector (Appeals), Bombay it becomes obvious that both the authorities have heavily relied upon the Ministry''s clarification. The petitioners were throughout making a grievance that the failure on the part of the department to supply the said clarification has caused prejudice as it deprived them of the opportunity of effectively answering the show cause notice issued by the department. They also complained that this conduct on the part of the department was in utter violation of the principles of natural justice. As pointed out earlier, there is a specific mention about this contention in the order of the Assistant Collector but he has failed to meet with the same. Mr. Gupta also pointed out that he has raised the same contention in the memo of appeal but even the Collector (Appeals), Bombay has failed to come to grips with the same. It is therefore, obvious that the complaint of the petitioners that the failure on the part of the department to furnish a copy of the Ministry''s clarification was in violation of the principles of natural justice and caused prejudice to the petitioners inasmuch as the petitioners were unable to effectively reply to the show cause notices went unheeded. In ground 6 of the petition the contention has been specifically raised but if we turn to paragraph 5 of the counter, we find that this ground has not been answered although grounds 1 to 5 and 7 have been answered. It follows, therefore, that the department has no answer to the contention. In the result we feel that both the orders of the Assistant Collector as well as the Collector (Appeals), Bombay must be struck down as being in violation of the principles of natural justice.

4. In the result, the petition succeeds. The impugned orders of the Assistant Collector, Central Excise and Customs, Division III, Vadodara Annexure ''F'' dated 3-9-1985 and Collector of Central Excise (Appeals), Bombay, Annexure ''G'', dated 6-2-1987 are quashed and set aside. The respondents are directed to furnish a copy of the Ministry''s clarification to the petitioners within two weeks from the receipt of the writ of this Court. After the copy is furnished, the petitioners will file a reply to the show cause notices within two weeks from the

 

receipt of the copy and the concerned Assistant Collector will thereafter proceed to dispose of the show cause notices in accordance with law. Rule is made absolute accordingly with no order as to costs.