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(1982) 01 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 3593 of 1980

Ambica Mata Yarn Mfg. Co., Baroda — APPELLANT

Vs

Superintendent of Central Excise, Range IV, Baroda and Others — RESPONDENT

Date of Decision : 15-01-1982

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35, 36
Constitution of India, 1950 — Article 226, 227

Citation : (1982) 10 ELT 244 : (1982) GLH 387 : (1982) 2 GLR 155

Hon'ble Judges : M.P. Thakkar, C.J;D.C. Gheewala, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; H.M. Mehta and K.N. Raval, for the Respondent

Judgement

Thakkar, C.J.—A partnership firm which is engaged in the business of slitting metallized polyester films by cutting the same into thin strips with the aid of machines and selling the same, has approached this Court by way of a petition under Articles 226 and 227 of the Constitution of India in order to challenge two orders, namely, (1) the order as per Annexure ''B'' dated December 1, 1980 passed by the Assistant Collector of Central Excise, Baroda Division holding that the product in question was chargeable to excise duty under Tariff Item 18(II)(iii), and (2) the order as per Annexure ''C'' dated August 20, 1980 passed by the Assistant Collector of Central Excise, Baroda Division, refusing to grant refund in respect of the excise duty already paid for the period from March 29, 1975 to March 28, 1978, April 1978 to September 1978 and October 1978 to November 1978, totalling to Rs. 161,424.60.

2. In so far as the first challenge is concerned, the impugned order as per Annexure ''B'' has been passed by the Assistant Collector of Central Excise at Baroda. An appeal is competent u/s 35 of the Central Excises and Salt Act, 1944 (the Act). The appeal lies to the Collector of Appeals, Bombay. Thereafter, in case the decision of the Appeal is adverse to the petitioner, the revisional authority u/s

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36 of the Act can be approached. The petitioner has invoked the high prerogative jurisdiction of this Court under Articles 226 and 227 of the Constitution of India without approaching the appellant or the revisional authority. The question whether or not the operations carried on by the petitioner constitute manufacturing activities or not and whether the product brought into existence by the petitioner is one which is chargeable to duty under T.I. 18(II)(iii) or any other Entry, is a question which requires to be resolved by the authorities constituted under the Act, taking into consideration the material produced by the party and taking into account all relevant circumstances. It can be urged before the appellate authority that the activity carried on by the petitioner does not amount to a manufacturing activity. The petitioner can also contend that assuming that it amounts to manufacture of a product, the product is chargeable to duty under some different Entry. All these are questions which can be satisfactorily resolved by the appellate authority especially constituted under the Act for this purpose. The petitioner can carry the matter further by way of a revision to the revisional authority in case he fails in his appeal and this Court can thereafter be approached by way of a petition under Article 227 of the Constitution of India in case the order passed by the revisional authority is adverse to the petitioner. The jurisdiction of this Court will then be restricted to the question whether or not the decision rendered by the competent authority under the Act is a plausible one or whether it discloses any error apparent on the face of the record calling for interference in exercise of the high prerogative jurisdiction under Article 227 of the Constitution. The authorities constituted under the Act must be permitted to discharge the functions for which they are constituted. They must be given an opportunity to play their statutory role in accordance with law and decide such questions in exercise of the functions entrusted to them by the Legislature under the Act. What is more, the authorities constituted under the Act have the time to collect data and obtain expert opinion on technical matters if necessary. They also have the necessary expertise. And it is their function to pronounce on all such questions raised by manufacturers who are required to pay excise duty under the Act in connection with the manufacture of their products. It is the birth right as also the statutory obligation of these authorities to fulfil the purpose for which they have been created by the sovereign will. As it is, the Courts are burdened with arrears of alarming proportions. Several matters which are exclusively within the jurisdiction of the Courts remain unattended. Those who have suffered injustice keep on waiting. Delay adds insult to their injury. The Court will not therefore do what the authorities specifically constituted under the Act, which are perhaps better equipped, can do, apart from the fact that it would not be proper for the Court to usurp their functions instead of restricting its own jurisdiction as to the aspect as to whether decisions rendered by them are amenable to the jurisdiction under Article 227 in view of any error apparent on the face of the record. The Court will not be able to do the work which is exclusively within its province if it gratuitously undertakes what others can do and ought to, it being within their jurisdiction. In trying to do what others can do the Court will not be able to do

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what is alone can do. And the arrears and the attendant injustice will grow day by day. And in trying to solve the problems of others, it will not be able to solve the problems of others, it will not be able to solve its own problems. The mountain of arrears will become unmanageable and will undermine and even scuttle the system. Under the circumstances, we are not inclined to entertain this petition on merits and to decide on our own as to whether or not the product brought into existence by the petitioner is chargeable to duty under one or the other Tariff Items of the Schedule to the Act. Learned Counsel for the petitioner however submits that since the High Court had admitted the petitioner on December 15, 1980 the petitioner had not filed any appeal against the orders and that the Department may assume the posture that the appeal is time barred if an appeal were to be filed in the wake of the order rejecting the application. In order to remove this hurdle in the way of the petitioner, it is directed that if the petitioner lodges an appeal on or before February 15, 1982 the Department shall entertain the appeal without raising the plea of limitation and dispose of the appeal in accordance with law with expedition, preferably within six months. It will be open to the petitioner firm to raise such other contentions as are open to it under the law before the appellate forum and it will be open to the Department to deal with these question on merits. We refrain from expressing any opinion on the points which have been raised in the course of the petition in the view of the fact that we are not inclined to entertain the petition for the aforesaid reasons. Respondents have also raised several contentions on merits. We are not expressing any opinion on these questions.

3. With regards to the challenge directed against the impugned order at Annexure ''C'', the same reasoning will apply for not entertaining the petition. We are told that in regard to the impugned order at Annexure ''C'' to the petitioner has already preferred an appeal to the competent authority under the Act.

4. Learned Counsel for petitioner contends that there may be similar orders for the subsequent periods in respect of which the petitioner may not have filed an appeal to the appellate forum in view of the pendency of the present appeal. In case there are any such orders, it will be open to the petitioner to prefer appeals against the relevant orders before the appellate authority and we have no doubt that having regard to the observations made herein, the appellate authority will entertain the appeals without raising any plea as regards limitation, having regard to the facts and circumstances of the case which have arisen in the context of the pendency of the present petition.

5. In the ultimate result the petition fails subject to the aforesaid directions. Rule is discharged. Interim orders will stand vacated. There will be no order regarding costs.

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