
(1989) 07 CAL CK 0016
In the Calcutta High Court
Case No : C.R. No. 15209 (W) of 1979

Bose and Company	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 12-07-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 201
Central Excises and Salt Act, 1944 — Section 2

Citation : (1989) 24 ECC 190 : (1989) 43 ELT 404

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : A.K. Ganguly, for the Appellant; S.M. Sanyal, for the Respondent

Judgement

Susanta Chatterjee, J.—The present Rule was issued on 10th of December, 1979 at the instance of the writ petitioners praying, inter alia, for issuance of a writ of Mandamus challenging the Notification No. 176/77, dated 18-6-1977 and the Notification No. 89/79, dated 1-3-1979, being annexures "S" to the writ application as ultra vires and also challenging the notice to show cause dated 18-10-1979 issued by the Assistant Collector of Central Excise, Calcutta-VI Division copy of which is annexure "N" to the writ petition on the ground that the entire proceedings initiated by the respondents are arbitrary, illegal and inoperative inasmuch as the search and seizure was without jurisdiction for the reason that the condition precedent to the exercise under Rule 201 of the Rules was not satisfied and that the Assistant Collector of Central Excise had no reason to believe on the basis of which he could make such search or authorise any officer to take effective step for searching. It is also alleged that there is job work undertaken by the petitioner and nothing is manufactured to come within the mischief of the Central Excises and Salt Act, 1944 and the impugned notice to show cause is full of inherent infirmities and it may be quashed accordingly. It is a further case of the petitioners that by notice to show cause the cases have been prejudged and the denial of giving benefit to the exemption is also contrary to and inconsistent with the provision of the Excise law.

2. Mr. Ganguly learned Advocate appearing for petitioners has drawn attention of the court to a decision reported in : 1987(29)ELT751(SC) (Lathia Industrial Supplies Co. Pvt. Littleton of Central Excise, Baroda) where the Apex Court of the country has found that Section 2(f) of the Central Excises and Salt Act, 1944 defines "manufacture" and fixation of cut off date by Excise authorities for which re rubberising and re lining of old and used vessels would not be treated as "manufacture" and accordingly the process, being the same throughout must be treated as not amounting to "manufacture" both before and after that date. Mr. Ganguly has also drawn the attention of the court to a decision reported in 1983 E.L.T. 876 {Associated Pigments Limited v. Collector of Central Excise, Calcutta and Others) wherein Chittatosh Mookerjee, J. (as His Lordship then was) found that the conversion of pure lead or lead ingots into suboxide and lead monoxide does not amount to manufacture as envisaged by Section 2(f) of the Central Excise Act. It was found that la is well settled that when an article undergoes a manufacturing process, a ne or different article emerges having a distinct name, character and use. Therefore, manufacture does not mean merely to produce some change in its substance. Another aspect has been considered in the said decision that if the writ petition has already been entertained and the petitioner has also established his case on merits, the writ petition cannot be dismissed on the ground of availability of alternative remedy.

3. Mr. Sanyal learned Counsel appearing for the respondents has submitted that the steps taken by the respondent in issuing the impugned notice to sho cause are well justified in la inasmuch as the petitioners have been found to manufacture items which have the marketability and there is nothing wrong in issuance of the impugned notice and the allegations made by the petitioners are unwarranted and uncalled for.

4. Having heard the learned Advocates for the respective parties and going through the materials on record it appears that in spite of specific disclosure of relevant facts as to the nature of work undertaken by the petitioners, the respondents were kept in dark until the search and seizure had taken place. There is no force in the argument that the searches were made illegally. The dispute has arisen as to whether the petitioners are actually manufacturing within the definition of Section 2(f) of the Act (in question) or the petitioners have undertaken only the job work. Notice to sho cause has been given. The petitioner was given ample opportunities to place on record for the necessary consideration of the adjudicating authority. At this stage the petitioner has moved the writ court to stall the entire proceeding. The writ court will certainly come to the rescue if the steps taken by the respondents are without jurisdiction or in the excess of the juris diction. If the initiation of the proceeding is prohibited in law, the court will not permit the respondent authorities to continue the proceeding in the proper perspective but if it appears to the court that there is no prohibition to initiate the proceeding in accordance with la and the petitioner was given ample opportunity to place on record relevant facts for adjudication, the writ court will not interfere in the matter. With all anxieties the

court has gone through the materials on record and this court does not find that there is any dispute as regards the principle of la as referred to above and as cited from the bar. Every decision is good but ratio of the decision would be applied to the facts and circumstances of each case. Looking in details all the facts it appears to the court that the writ petition is absolutely premature and it has successfully stalled the proceeding for ten years. If it is proved by the petitioner in giving explanation to the sho cause before the adjudicating authorities that the work undertaken is only job work and did not attract excise duty no order can be passed against the petitioner or even the order is passed, the same can be challenged before the appropriate forum or even before the writ court if there is manifest injustice or that the findings are perverse. But before such stage has reached the petitioner cannot come before this Court. This Court also observes that the respondents have not performed their duties properly having not taken any step in this court to vary the interim order of keeping the matter in cold storage for a long period nor they have taken steps to file any affidavit-in-opposition. Be that as it may, this court is not inclined to interfere in this matter inasmuch as the petitioner will be given proper opportunities to file explanation within four weeks from date and this authorities concerned will proceed with the matter in accordance with law. With this observation the Rule is discharged without any order as to costs. All interim orders, if any, stand vacated. Until the disposal of the explanation to the sho cause the respondents will not effect the notice of demand.