(2003) 12 JH CK 0024

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2972 of 2003

Central Coalfields Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 24-12-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 226

Citation : (2004) 113 ECR 513 : (2004) 1 JCR 437

Hon'ble Judges : P.K. Balasubramanyan, C.J;Tapen Sen, J

Bench : Division Bench

Advocate : A.K. Mitra, Udayan Sen, Ananda Sen and Indrajit Sinha, for the Appellant; P.K. Prasad, Sr. S.G.S.C. and Ratnesh Kumar, J.C. to Sr. C.G.S.C., for the Respondent

Judgement

P.K Balasubramanyan, C.J.—Petitioner, the Central Coalfields Limited, has filed this writ petition seeking the issue of a writ of certiorari to quash Annexure-18 communication issued by the office of the Assistant Commissioner, Central Excise Division, Ranchi, in respect of the clearance of excisable goods from the Central Repair Shop of the petitioner located at Barkakana in the district of Hazaribagh. By that communication, dated 6.6.2003, the petitioner was informed that the exemption under Notification No. 63/95 CE dated 16.3.1995, was not available to the goods manufactured in the concerned workshop, since the concerned workshop was a factory registered under the Factories Act, 1948. It is seen that the petitionen was issued a show cause cum demand notice dated 8.4.2003, informing the petitioner that the manufactured articles were dutiable under the Excise Act, 1944 and the petitioner has submitted a reply dated 3.6.2003, to that notice. It is common case that the adjudication proceedings in that behalf is pending in terms of Section 11A of the Act.

2. According to the petitioner, the impugned order dated 6.6.2003, was not sustainable in view of the fact that the Customs Excise and Gold (Control) Appellate Tribunal, Eastern Bench, has decided that the workshop in question

was a ''mine'' within the meaning of the Mines Act, 1952 and hence it could not be considered to be a factory within the meaning of Section 2(m) of the Factories Act, 1948 and hence the exemption notification referred to in the order as well as the ones earlier issued, applied to the articles manufactured in the workshop for the purpose of supply to the mines of the Company and this decision was binding on the authorities concerned and judicial discipline warranted that the authority follow the decision rendered by the Appellate Tribunal. This is sought to be met by counsel for the Department by pointing out that the subject matter of the decision rendered by the Appellate Tribunal was not relating to the exemption provided by notification No. 63/95 CE and that the decision relating to an earlier notification was rendered without bearing in mind the fact that the workshop in question was one registered under the Factories Act and consequently outside the exemption notification. In any event, it is submitted that this question need not be considered or decided now and it would be appropriate to leave it for adjudication by the adjudicating authority against whose decision, an appeal and a further appeal are provided by the Statute and it would be time enough for this Court to consider that question when it reaches this Court in the regular course.

3. We are inclined to find some substance in this contention of the learned Counsel for the department. We also think that the time has not arrived for us to decide the question posed for a decision before us by the learned counsel for the petitioner. How far the principle of res judicata would apply in the matter of assessment under the Excise Act for different years and if the principle applies, what exactly was decided earlier by the Appellate Tribunal and whether the Department is not entitled to say that a particular significant fact was omitted to be considered and consequently the prior decision cannot be considered to be final, are all questions that may require examination at the appropriate stage. The fact that the workshop is registered as a factory under the Factories Act, 1948 is not disputed. But it is pointed out that even the workshop which satisfies the definition of a ''mine'' under the Mines Act, 1952 had to be registered under Factories Act. for the purposes of adopting health and safely measures under the Factories Act in view of the subsequent requirement insisted on by the notification, SO No. 1188 dated 30.3.1964, under the Mine Act, 1952 and therefore the factum of registration under the Factories Act by itself cannot conclude the issue.

4. We do not think that the time has come for us to decide all these questions. We think that we should leave the parties to have the adjudication proceedings completed pursuant to the issuance of Annexure-16 notice and Annexure-17 reply filed by the petitioner. Obviously, in that proceeding, the petitioner will have an opportunity of being heard and can establish that the goods are liable to be exempted in view of notification No. 63/95 CE and the Department also can have an opportunity to establish that the exemption under the said notification does not apply. We, therefore, decline to answer the questions raised before us in this writ petition. We also find that the questions to be decided are mixed questions of fact and law and it would be appropriate to leave them to the authorities to

decide in the first instance.

5. Learned counsel for the petitioner then submitted that pursuant to the interim order of this Court, the articles manufactured were being removed from the workshop after executing the necessary bond and this arrangement may continue until the adjudication process is completed and a decision taken. Learned counsel for the Department submitted that on the scheme of the fact, no goods should be permitted to be removed without payment of duty and in that situation it would not be appropriate to permit removal of the articles manufactured merely based on the bond. He pointed out that there is a provision for refund under the Act and in case the petitioner succeeds in establishing that the articles manufactured are entitled to exemption, the amount can be refunded and the petitioner cannot be prejudiced. To meet this contention, learned counsel for the petitioner submitted that the petitioner was after all a Central Government Undertaking and there will be no question of any inability to pay duty after due adjudication of the question whether there is liability to duty at all.

6. We find that we had passed an order on 9.7.2003, permitting the petitioner to remove the goods after executing a bond favouring the Commission of Central Excise, undertaking to pay whether duty is found payable and to maintain proper accounts of the goods removed from the premises to the mines operated by the petitioner. We had also directed that on the undertaking being given, the petitioner will be permitted to remove the goods referred to and that, that arrangement would continue until further orders.

7. Weighing the respective submissions, we think that it would be appropriate to permit this arrangement to continue until the adjudication process initiated by the office of the Commissioner of Central Excise on 8.4.2003, by Annexure-16 notice to which Annexure-17 reply dated 8.6.2003, has been filed by the petitioner, is completed. We also direct the Commissioner of Excise, Ranchi to complete the adjudication proceedings initiated as above, within a period of two months from today after giving the petitioner an opportunity to substantiate its claim. The Commissioner will ensure that he answers all the aspects raised by the parties while passing the order in the adjudication proceeding.

8. This writ petition is thus disposed of by directing the Commissioner of Central Excise, Ranchi to complete the adjudication proceedings within two months from this date and meanwhile directing the respondents to permit the petitioner to remove the articles manufactured in the Central Workshop of the petitioner situated at Barkakana after executing a bond favouring the Commissioner undertaking to pay whatever duty is found payable for the goods removed and on the petitioner maintaining proper accounts of the goods thus removed from the premises to the mines operated by the petitioner. This arrangement will continue until the adjudication is completed. It is made clear that this permission for removal of the goods on the basis of the undertaking will be subject to the result of the adjudication by the Commissioner and without prejudice to the claims and rights of either party.

