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(1990) 10 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 1121 of 1982

Central India Machinery Manufacturing Co. Ltd. and Another APPELLANT

Vs

The Superintendent, Central Excise and Others RESPONDENT

Date of Decision : 27-10-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4
Constitution of India, 1950 — Article 226

Citation : (1990) 2 RLW 556 : (1990) 2 WLN 267

Hon'ble Judges : K.C. Agrawal, C.J;B.R. Arora, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This petition under Artilce 226 of the constitution has been filed by Central India Machinery Manufacturing Limited (for short CIMMCO'') challenging the validity of the following five show cause notices issued by the Superintendent, Central Excise, Bharatpur:

(i) show cause notice no. I/RO/BHP/79/2377, dated December 19, 1979 for the period for March 1, 1975 to December 19, 1979;

(ii) Show, Cause notice no. I/RO/BHP/81/764, dated June 25, 1981 for the period from December 20, 1979 to March 31, 1981;

(iii) Show cause notice no. 1/RO/BHP/81/1104, dated September 30, 1981 for the period from April 1, 1981 to September 30, 1981;

(iv) show cause notice no. 1/RO/BHP/81/252, dated February 17, 1982 for the period from October 1, 1981 to January 31, 1982;

and

(v) show cause notice no. 20/24/CIMMCO/78/1038, dated July 12/13t 1982 for the period from February 1,1982 to June 30, 1982.

2. The petitioner, apart from challenging the validity of the notices aforesaid, has also sought the relief of mandamus directing the respondents nos. 1, 2, and 3 not to levy or collect any duty or excise in respect of wagons supplied to the Railway Board and the Union of India, respondents nos. 5 and 6 respectively.

3. The petitions no. 1 is a company corporate under the Companies Act, 1956 and carries on the business of manufacturing and dealing in wagons, structurals, various items textile machinery and similar other items. This writ petition relates to wagons manufactured by CIMMCO, which are delivered to respondents nos. 5 and 6.

4. Prior to March 1,1975 wagons were not excisable goods within the meaning of the said Act and no excise duty was leviable on the manufacture of wagons from March 1, 1975, Item no. 68 was introduced in the First Schedule, as a result whereof wagons became excisablw goods. .

5. Under the contract respondents nos. 5 and 6 were bound to supply free of cost certain items of raw-material and components for the fabrication of wagon. These materials are mentioned below:

i- Wheel Sets

ii- Roller Bearing Axle Boxes

iii-Centre Buffer Couplers

iv- Cast Steel Bogie Bolsters

v- Air Brakes

vi- Cast Steel Bogie Assemblies.

These items received by CIMMCO free of cost from Railway Board and Union of India were the property of Railway Board and that CIMMCO held the same in trust. In respect of these items CIMMCO do not incur any cost and consequent in calculating or computing the price of wagons these items are excluded. The invoice price included the full amount received by CIMMCO from the Railway Board for the fabrication and delivery of wagons, but did not include the value of cost of items received free of cost from the said Board.

6. Respondents nos. 1, 2 and 3 directed CIMMCO to furnish the value and/or costs of the items received by CIMMCO free of cost from the Railway Board. CIMMCO had no knowledge of the value and/or costs of the said items. CIMMCO repeatedly requested the Railway Board and respondent no. 6 to furnish the said value and/or costs so that the same be furnished to respondents nos. 1, 2 and 3. But neither the Railway Board nor the Union of India has furnished the same, as a result whereof CIMMCO was unable to comply with the demand of respondents nos. 1, 2 and 3 for the value and/or costs of the items supplied to CIMMCO. As the said respondent nos. 1, 2 and 3 were not permitting clearance of wagons fabricated by the petitioner for and on behalf of the respondents 5 & 6, the

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petitioner filed this writ petition alleging that the respondents could not include in the value of wagons for the assessment of duties of excise which were received by CIMMCO free of costs from the Railway Board and Union of India. CIMMCO, therefore, filed the writ petitions challenging the five notices mentioned above and have claimed that the respondents 1, 2 and 3 could not restrict the clearance of wagons on the ground on which they purported to do so.

7. The writ petition has been contested by the Excise Department on the ground that the petitioner was obliged under the law to produce evidence before the excise authorities to show the value of the wagons at which they were being sold. The burden to prove the same was on the petitioner. Since CIMMCO did not furnish any material about the valuation of the railway wagons, therefore, show cause notices were issued to CIMMCO. CIMMCO, however, kept, quite therefore after taking various factors and data into consideration and calculation it gave tentative valuation to which CIMMCO was expected to submit their own reply and to give valuation according to them.

8. Counsel for CIMMCO drew our attention to the reply given in the written petition as well as to the letter dated 11.5.1981 sent by the Railway Board. The argument raised on behalf of the petitioner counsel was that the respondents nos. 1, 2 and 3 did not dispute the free supply of items mentioned in paragraph 6 of the writ petition, the details of which have been given above, and, as such, the High Court should issue a direction to the respondents nos. 1, 2 and 3 to exclude or deduct the price of those items in arriving at the price at which excise duty was leviable.

9. Section 4 of the Central Excises & Salt Act provides for determination of value for the purpose of charging duty of excise under the Act. The valuation has to be fixed in accordance with the said section and rules framed there under. This section has been interpreted by the Supreme Court recently in two decisions reported in Ujagar Prints Vs. Union of India (UOI), and Mis. Ujagar Prints and Ors. v. Union of India and Ors. 1989 SCC 53 Counsel appearing for the respondents nos. 1, 2 and 3 urged that ''job work'' also had to be included for finding out the excisable value. Even if it was correct that items mentioned in paragraph no. 6 of the writ petition were received free of charge, what is important to be established is the determination of valuation of excisable goods for purposes of charging duty of excise in accordance with Section 4 of the Central Excise Act. The relevant portion of Section 4(1) of the Act is quoted below:

Section 4(1)-

Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value, shall, subject to the other provisions of this section, be deemed to be-

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assesses to a buyer in the course of wholesale trade for

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delivery at the time and place of removal, where the buyer Is not a related person and the price is the sole consideration for the sale.

10. The value of the goods for the purpose of excise must be taken into account only the manufacturing costs and the manufacturing profit. This cannot be found out unless the fact that what was the excisable valuation was asserted. The ascertainment as to what is the excisable value is essentially and fundamentally a question of fact. The Central Excises and Salt Act contains a wholesale provision for the said purpose. CIMMCO should have filed an objection before the authority who issued the show cause notices. Instead of doing so, it rushed to this Court and filed the writ petition in 1982. It is lamentable state of affairs that more than eight years have passed, but the controversy is not yet decided. It was suggested on behalf of the respondents nos. 1, 2 and 3 that CIMMCO was not interested in final decision of the case and it was the reason that they came to this Court by means of the present writ petition. Contrary to the submission of the respondents'' counsel, Shri C.N. Sharma counsel appearing for the petitioners, urged that no governmental machinery has any right to harassed citizen or a company carrying on business by serving false notices on a party and as in the instant case there was no justification of service of notices, the respondents could not levy the charge of mala fides on the petitioner.

11. Be that as it may, the fact remain that our legal system permitted the petitioner to prolong the litigation for eight years.

12. The settled law is that when a rig or liability is created by a statute which itself prescribes the remedy or procedure f5r enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution, (see Abraham v. I T O AIR 1961 SC 60 and N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, In that event the High Court would be fully justified in the exercise of its discretion to decline to interfe until all the statutory remedies are exhausted.

13. Another difficulty in this case is that the relief has been claimed by the petitioner raising certain questions of facts. The High Court nature of jurisdiction that it exercises under Article 226 of the Constitution is unable to entertain evidence and to give a finding. Evidence in this case would be voluminous and would not be in the interest to take them and decide the case. That facts on which the petitioner is making a claim are disputed by the Excise Department. That being so, the appropriate course, appears to us, is to direct the petitioner to file the remedy provided by the aforesaid Act. It is worthy being pointed out that the petitioner has already filed a reply to the show cause notice and taken the plea on which it claims that excise duty is not liable to be imposed on it in the manner and for the same that it was done. Whether the petitioner receives the various items used in the manufacture of wagon mentioned in paragraph 6 of the writ petition free of charge would require enquiry to be made. The decision would depend on the appreciation of evidence.

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14. Shri C.N. Sharma, counsel for the petitioner, urged that if the letter dated 11.5.81 is taken into account and the liability of the petitioner to pay excise duty is decided on its basis, there would be no difficulty for this Court to do so. This Court could decide the writ petition without investigating questions of fact. This letter may not be decisive or conclusive of the controversy involved. Learned Counsel is, however, right that the excise authorities will have to consider the same while deciding the objection filed by the petitioner to the show cause notice. A direction was desired by the counsel for the petitioner to be given to the excise authorities in that regard. We do not consider it to be necessary so to do as, in our opinion the excise authorities will consider that letter and other documents and papers, which would be placed from the side of the petitioner, to fortify its view point.

15. From the arguments advanced and the record it appears that the petitioner has already submitted a reply to the show cause notice. However, if they wish to supplement the same, the concerned excise officer will provide three weeks'' time to the petitioner-CIMMCO-and would decide the case within three months from today. During this period of three months, respondents nos. 1, 2 and 3 will not take any steps to realise excise duty and the stay order granted by this Court would remain in operation for that period.

16. With the above directions, the writ petition is dismissed.

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