(1989) 03 MP CK 0052

In the Madhya Pradesh High Court

Case No : M.P. 1360 of 1988

Chandra Prabha Syntex Pvt. Ltd. — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 30-03-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 2
Constitution of India, 1950 — Article 226

Citation : (1992) 42 ECR 378 : (1991) 55 ELT 40

Hon'ble Judges : S.K. Dubey, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; B.G. Neena, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners by this petition under Article 226 of the Constitution of India have challenged the letters Annexures-J and K issued by the State Bank of Indore to the petitioners and the Assistant Collector, Central Excise, Ujjain to the Manager State Bank of Indore, Yeshwant Niwas Road Branch, Indore, respectively.

2. The facts leading to this petition, in short, are that the petitioner No. 1, which is a Company registered under the Companies Act, 1956 is engaged in manufacture of grey cloth and processing, along with the job of processing including dyeing, bleaching and finishing of cloth. There arose a dispute between the Central Excise Department of the Union of India and the petitioners about the interpretation and applicability of the term ''manufacture'' as provided u/s 2(f) of the Central Excise Act, 1944. The matter reached the Hon''ble Supreme Court of India, wherein a Writ Petition No. 1442 of 87 was filed by the petitioners along with other writ petitions raising the same issue by different manufacturers in different States. The Supreme Court was pleased to admit the writ petition of the petitioners and grant a stay order on 4-11-1987. The relevant portion of the stay order granted by the Supreme Court is as under :

"Pending notice returnable in three weeks, the respondents, their servants and agents are restrained from levying and recovering the disputed portion of duty of excise i.e. duty on the difference between the ultimate price charged from the customers and the value of the processing work done by the petitioners on the condition that the petitioners shall furnish Bank Guarantee to the full extent in regard to the aforesaid difference to the satisfaction of the respondents. The Bank guarantee shall be furnished by the petitioners within four weeks of each of the clearance or demands as the case may be."

3. The petitioners furnished the bank guarantees with respondent No. 4, a statement of which is filed as Annexure B. As a result of the decision of the petition of the petitioners, the Assistant Collector directed the respondent No. 4 to encash the bank guarantees referred to in Annexure B. Accordingly respondent No. 4 issued a letter to the petitioners Annexure J along with copy of letter Annexure K which was issued by the Assistant Collector, Central Excise, Ujjain to respondent No. 4, the Manager, State Bank of Indore.

4. The grievance of the petitioners is that the certified copy of the judgment and the order of the Supreme Court was neither produced by the respondent No. 3 before respondent No. 4 nor a copy thereof was served to the petitioners. Therefore, there being no basis for the Bank Authorities to act upon the letter, which is not supported by certified copy of the judgment, the order for encashing the bank guarantees passed by respondent No. 3 is neither proper nor justified. It has also been averred that the act of encashing the bank guarantees is also without any authority of law as the final adjudication order about the duty payable by the petitioners have not been passed.

5. In reply to the show cause notice issued by the Court to the Union of India it has been averred that the Hon''ble Supreme Court while admitting the writ petition of the petitioners and others, vide stay order dated 4-11-1987 has clearly laid down a condition that the petitioners shall furnish bank guarantee in regard to the difference between the ultimate price charged from the customers and value of the processing work done by the petitioners. Such bank guarantees were required to be furnished by the petitioners within four weeks of each of the clearances or demands as the case may be. Accordingly the petitioners had furnished from time to time bank guarantees as detailed in Para 1.2 of the reply. It has further been stated that the writ petition No. 1442 of 87 filed by the petitioners has already been decided by the Supreme Court on 4-11-1988. A copy of the Supreme Court judgment has been filed by the Union of India at Annexure A, wherein it has been held that the processing of the cloth amounts to manufacture and the sale price of the processed fabrics would be assessable value for determination of duty of excise. In the last para of the aforesaid judgment it has clearly been directed that the Union of India and its authorities shall be entitled to recover the amount due by way of arrears of excise duty and shall be entitled to take necessary steps to seek the enforcement of the bank guarantees, if any, for the recovery of the arrears.

Therefore, in the light of the above judgment of the Supreme Court the respondent No. 3 is authorised to encash the bank guarantees furnished by the petitioners. The object of the present application filed by the petitioners is only to circumvent the payment of the amount which is due to the department and to protract the proceedings so that in the meantime the payment can be delayed as along as possible. The directions given by the Supreme Court are unambiguous clear and categorical, still the petitioners have chosen to file this writ petition on frivolous and totally untenable grounds. According to the Union of India question of any formal adjudication by the Assistant Collector is categorically ruled out and would be against the spirit and purpose of the order passed by the Hon''ble Supreme Court.

7. After hearing the learned Counsel for both the parties and perusing the stay order and the final judgment of the Supreme Court of India, we are of the view that this petition is without any merit. The Supreme Court has given the following directions in respect of recovery:

(i) In cases where notices u/s 11A of the Central Excises and Salt Act, 1944 have been served and claims do not cover period beyond six months from respective dates of notices, the respondents would be entitled to realise the dues and encash bank guarantees, if any, for his purpose.

(ii) In case of dispute as to whether the notices u/s 11A have been issued or not, the Assistant Collector will decide the issue.

(iii) In cases where notices are yet to be issued the respondents will be entitled to do so but the same would not go beyond six months.

8. The notices u/s 11A have been served on the petitioners and the claims contained therein do not cover period beyond six months from the date of the notices. As such in view of the clear terms of the Supreme Court the respondent No. 3 is entitled to realise the dues and encash bank guarantees furnished by the petitioners. It is only in case of a dispute about the issuance of notice that the Assistant Collector has to take a decision and in those cases wherein the notices have not been issued the Excise Authorities have been entitled to do the same for a period which would not go beyond six months. The bank guarantees were furnished by the petitioners on the difference between the ultimate price charged from the customers and the value of the processing work done by the petitioners. The bank guarantees were to be furnished by the petitioners within four weeks of each of the clearance or demands as the case may be and such guarantees were to the satisfaction of the respondents. As such the bank guarantees were given by the petitioners after the difference in payment as aforesaid was determined. Therefore, a question of fresh adjudication would not arise.

9. In view of the aforesaid, we find that the petition is without any force. It is accordingly dismissed.

