(1996) 01 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No. 26044 of 1995, in W. M. P. No. 25684/95 in W. M. P. No. 21340/95 in W. P. No. 13292/95 and W. P. No. 16357/95 and W. M. P. No. 25963/95 in W. P. No. 16337/95

Coats Viyella India Ltd. APPELLANT

Vs

Supdt. of Central Excise, Ambasamudram RESPONDENT

Date of Decision : 02-01-1996

Acts Referred:

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

Citation : (1996) 82 ELT 186

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : Shri Govindaswaminathan for M.S. Sivam and G. Anbumani, for the Appellant; Shri K. Jayachandran, ACGSC, for the Respondent

Judgement

A.R. Lakshmanan, J.—Heard Mr. S. Govindaswaminathan, learned Sr. Counsel for Mr. M. S. Sivam counsel for the petitioner, and Mr. K. Jayachandran, learned Additional Central Government Standing Counsel for the respondents.

2. Writ Miscellaneous Petition No. 26044 of 1995 has been filed to modify my order, dated 6-1-1995 passed in W. M. P. No. 23684 of 1995 in W. P. No. 13292 of 1995. The Superintendent, Central Excise, Ambasamudram, by letter OC No. 485 of 1995, dated 30-3-1995 requested the petitioner company to pay the differential duty of Rs. 5,13,80,385/- as indicated in the work sheet enclosed with the letter for the clearances of Core Spun Thread effected from March, 1994 to February, 1995. According to the petitioner, the above direction contravened the provisions of Central Excises and Salt Act (in short ''the Act'') and therefore, they informed the Superintendent, C. E., Ambasamudram that the request to pay the differential duty is not valid in law without following the due procedure laid u/ s 11A of the Act. On receipt of the said letter, the first respondent issued a show cause notice, dated 14-6-1995 calling upon the petitioner company to show cause to the Assistant Commissioner of Central Excise, Tirunelveli Division

(second respondent herein) as to why the differential duty of Rs. 5,13,80,385/- should not be demanded for the Core Spun Thread cleared during the period 1-3-1994 to 14-2-1995. On 4-9-1995, the Superintendent Central Excise, Ambasamudram in obedience of the order, dated 2-9-1995 of the Assistant Commissioner, Tirunelveli, detained the finished goods worth about Rs. 5.16 crores for non-payment of the differential duty of Rs. 5.13 crores. Aggrieved by that action, the petitioner filed Writ Petition No. 13292 of 1995. It was contended that Section 11A of the Act specifically lays down the procedure that the Assistant Collector Central Excise, after considering the representation of the assessee shall determine the amount of duty of excise due and thereupon the assessee shall pay the amount so determined and that the Rule 230 can be invoked to detain the goods of the assessee only on non-payment of such duty duly determined u/s 11A of the Act. When the W. M. P. No. 21340 of 1995 in W. P. No. 13292 of 1995 came up for orders on 17-10-1995, on behalf of the petitioner company, it was submitted that the authorities might be directed to consider and dispose of the show cause notice and only after the order duly passed u/s 11A of the Act, the petitioner company could pay the amount so determined. On 20-10-1995, I directed the third respondent, the Commissioner of Central Excise, Madurai to dispose of the representation, dated, 13-7-1995 of the petitioner company, within four weeks from that date. I made it clear that the above direction give to the third respondent shall not in any way stand in giving a direction to the petitioner to pay a portion of the amount demanded towards differential duty without prejudice to its contentions and until order is passed by the third respondent on the petitioner''s representation, dated 13-7-1995, in order to clear the goods which are lying in the petitioner''s godown. In the concluding portion of the abovesaid order, I directed as follows :

"14. Taking all the above aspects into consideration, I am of the prima facie view, that the goods manufactured and stocked already by the petitioner and detained by the excise authorities under the detention mahazar in question, have to be released subject to the following conditions.

The petitioner shall pay Rs. 2.50 crores to the first respondent in four equal installments of 15 days interval. On receipt of the first payment, the respondents shall permit the petitioner to clear the detained goods. The first payment shall be made on or before 15-11-1995 and the subsequent payments at an interval of 15 days each. This payment is directed to be made without prejudice to the right and contentions of the petitioner and the respondents/Department........"

3. The petitioner filed Writ Miscellaneous Petition No. 23694 of 1995 to modify the order, dated 20-10-1995 passed in W. M. P. No. 21340 of 1995 in W. P. No. 13292 of 1995. Even though the petitioner company explained their financial constraints in paying the money, as ordered earlier and sought permission to give a bank guarantee for Rs. 2.50 crores, I declined to modify my earlier order. However, I directed the Assistant Commissioner, Central Excise Ambasamudram (second respondent), instead of third respondent, as directed earlier to dispose

of the show cause notice, dated 14-6-1995 on or before 17-11-1995. The above order was passed by me on 6-11-1995 by permitting both parties to move this Court for any further direction, after the adjudication is over by the second respondent. The second respondent, after holding a personal hearing passed order in Original No. 123 of 1995, dated 16-11-1995, adjudicating the show cause notice, OC. No. 1006 of 1995, dated 14-6-1995. By the said Order, the Assistant Commissioner, Central Excise, Tirunelveli Division directed the petitioner company to pay a sum of Rs. 2,56,20,679/- being the balance.

The details are as under :

Aggrieved by the said order, dated 16-11-1995, the petitioner company filed Writ Petition No. 16337 of 1995 to quash the said order. The said Writ Petition was admitted by this Court on 28-11-1995 and notice was directed to be issued to the respondents both in the main writ petition as well as in W. M. P. No. 25963 of 1995 which was filed for an order of interim stay of the order dated 16-11-1995 of the Assistant Commissioner of Central Excise, Tirunelveli, pending disposal of the main writ petition.

4. It is contended that the second respondent without adverting to the legal submissions and the judicial decisions relied on to substantiate the legal submissions urged before him, has passed the said order, dated 16-11-1995. The second respondent has held that the demand made is consequential one and that this Court has also upheld the same and that therefore, the demand is valid. According to the petitioner, the above contention is not sustainable in law and any demand of duty has got to be made in accordance with the provisions of Section 11A of the Act and any transgression of the statutory provision renders the demand illegal in law.

5. In the show cause notice, dated 14-6-1995, the respondents, quantifying the duty liability as Rs. 5,13,80,385/- for the period commencing from March, 1994 to February, 1995 have demanded the said amount. The second respondent in the order dated 16-11-1995 in Original No. 123 of 1995, however, has determined the duty liability for the period from March, 1994 to February, 1995 as Rs. 2,56,20,679/-. It is contended that the provisions of Section 11A of the Act empower the Assistant Commissioner, Central Excise to demand any duty short levied only for the six months preceding the show cause notice and that the demand if at all sustainable in law is liable to be restricted to six months preceding the show cause notice and not otherwise. According to the petitioner, the respondent can demand duty only for the period 14-12-1994 to 14-2-1995 and the quantified amount for the above period would only come to Rs. 79,56,913/- and the same can only be demanded, if the adjudication is sustainable in law. The second respondent in total transgression of the order of this Court has appropriated Rs. 7,03,604/-, the rebate lawfully payable to the petitioner in the order dated 16-11-1995 towards the duty of Rs. 2,63,24,283/- determined for the period March, 1994 to February, 1995. It is also submitted that the petitioner company in obedience of the order dated 20-10-1995 made in

W. M. P. No. 21340 of 1995 in W. P. No. 13292 of 1995 has paid on sum of Rs. 62.50 lakhs on 15-11-1995 and that therefore the duty liability for the period in question (14-12-1994 to 14-2-1995), if lawfully determined, would come to Rs. 79,56,913/-. The petitioner company has already paid Rs. 69,53,604/-. Therefore, Rs. 10,03,309/- alone remain as balance.

6. Against the Order of the Assistant Commissioner, Central Excise, Tirunelveli Division in original No. 123 of 1995, dated 16-11-1995, the petitioner company has to file an Appeal within three months from the date on which the order was communicated to the petitioner. The person aggrieved by the order has to file an Appeal against the order in question to the Commissioner of Central Excise (Appeals), Tiruchirapalli. The petitioner without availing of the statutory alternative remedy, has rushed to this Court by filing the above Writ Petition to quash the order, dated 16-11-1995. Even according to the petitioner, there is a dispute with regard to the quantum of the duty amount and the period for which the said duty amount is payable. Under the impugned order in Writ Petition No. 16337 of 1995, the liability for the period March, 1994 to February, 1995 has been fixed at Rs. 2,56,20,679/-, whereas the petitioner company claims that the respondents in accordance with Section 11A of the Act can only demand duty for the period 14-12-1994 to 14-2-1995 at Rs. 79,56,913/- and that the same can be lawfully demanded, if the adjudication is sustainable in law. The petitioner company further contends that the respondents have wrongly appropriated Rs. 7,03,604/-, the rebate lawfully payable to the petitioner company, in the order, dated 16-11-1995 towards the duty of Rs. 2,63,24,283/- determined for the period March, 1994 to February, 1995. When there is a factual dispute with regard to the quantum of the duty payable and the period for which the said duty is payable, this Court cannot decide such disputed question by exercising its jurisdiction under Article 226 of the Constitution of India. The impugned order was passed on 10-11-1995. The petitioner company has got three months'' time to file an Appeal against the said order before the Commissioner, Central Excise, Tiruchirapalli, from the date of the communication of the said order to them. Even though a few legal contentions have been raised in these petitions, I refrain from considering them, in view of the availability of a statutory remedy by way of an Appeal to the Commissioner, Central Excise, Tiruchirapalli. The petitioner company is at liberty to file an Appeal before the said Authority and raise all their contentions raised in the writ petition and the said Appellate Authority shall consider and decide the same in accordance with law and on merits, after affording a personal hearing to the petitioner company so as to enable them to put forth all their contentions either by themselves or through their Counsel. While computing the period of limitation, the time taken by the petitioner company for filing the main writ petition (W. P. No. 16337 of 1995) till the date of its disposal shall be excluded. Therefore, Writ Petition No. 16337 of 1995 is dismissed, reserving liberty to the petitioner company to file the Appeal before the Appellate Authority, as indicated above. Consequently, Writ Miscellaneous Petition No. 25963 of 1995 is also dismissed.

7. In so far as the prayer for modification of the earlier order, dated 6-11-1995 is concerned, I am of the view that the said prayer can be considered, in view of the change in circumstances after my order, dated 6-11-1995. As already seen, in the show cause notice, dated 14-6-1995, the respondents, quantifying the duty liability at Rs. 5,13,80,385/- for the period from March, 1994 to February, 1995 have demanded the said amount. However, the second respondent, in his order, dated 16-11-1995 (referred to above) determined the liability at Rs. 2,50,56,102/-. It is true that this Court has passed an order, directing the respondents to pay a sum of Rs. 2.50 crores in four equal instalments of 15 days interval, taking into consideration of the show cause notice, dated 14-6-1995, quantifying the duty liability at Rs. 5,13,80,385/-. However, the said order was modified by this Court by directing the second respondent to dispose of the show cause notice, dated 14-6-1995. But in regard to the payment of Rs. 2.50 crores no modification was made. Liberty was also reserved to both parties to move this Court for any further direction, after the adjudication is over by the second respondent. Pursuant to the order, dated 16-11-1995, in view of the changed circumstances, fixing the liability at Rs. 2,50,56,102/- instead of Rs. 5,13,80,385/-, the petitioners have come forward with the present Writ Miscellaneous Petition No. 26044 of 1995 for modification of the earlier order. Hence, the change in the circumstances, as per the order dated 16-11-1995 has got to be necessarily taken into account. As on date, the duty liability is quantified at Rs. 2,50,56,102/-. In the earlier Order, I directed the petitioner company to pay fifty per cent of the duty liability in four equal instalments of 15 days interval. Fifty per cent of the duty liability comes to Rs. 1,25,28,051/-. The petitioner company has already paid a sum of Rs. 62,50,000/-. After giving credit to this sum, the balance amount payable by the petitioner company comes to Rs. 62,78,051/-. The petitioner company is therefore directed to pay the said balance amount of Rs. 62,78,051/- on or before 31-1-1996. This payment is directed to be made without prejudice to the rights and contentions of the petitioner in the Appeal to be preferred by the petitioner company to the Commissioner, Central Excise (Appeals), Tiruchirapalli.

8. Mr. K. Jayachandran, learned Additional Central Government Standing Counsel appearing for the respondents vehemently contends that having failed before Kanakaraj, J. (in W. M. P. No. 32159 of 1994), as also confirmed by the Division Bench of this Court (in W. A. No. 221 of 1995), the petitioner company is not entitled to seek any such modification of the earlier order, dated 6-11-1995 made in S. N. P. No. 23684 of 1995 in W. K. P. No. 21340 of 1995 in W. P. No. 13292 of 1995 and that if any such modification is made, that will nullify the effect of the orders already passed by learned single Judge as well as by the Division Bench of this Court. I am unable to agree with the said contention. While passing the order, dated 6-11-1995 I gave liberty to both parties to approach this Court for any further direction/order after the adjudication by the second respondent is over. It is not in dispute that the amount demanded was Rs. 5,13,80,385/- under the show cause notice, dated 14-6-1995 has been modified

by the order dated 16-11-1995 and quantified at Rs. 2,50,56,102/-. Therefore, the liability of the petitioner company as on date is at Rs. 2,50,56,102/-. While permitting the petitioner company to file an Appeal before the Commissioner of Central Excise, Tiruchirapalli, this Court can always issue appropriate directions in regard to the payment of the duty pending adjudication of the Appeal by the Appellate Authority to be preferred against the impugned order, dated 16-11-1995. The direction, in my opinion will serve the ends of justice.

9. I, therefore, modify the earlier order, dated 6-11-1995 and direct the petitioner company to pay a sum of Rs. 1,25,28,051/- (Rupees One crore, twenty five lakhs, twenty eight thousand and fifty one only), in view of the changed circumstances. The amount already paid will be given credit to and the balance of Rs. 62,78,051/- alone is payable on or before 31-1-1996. The Appeal to be preferred by the petitioner company shall be disposed of by the Appellate Authority within a period of three months from the date of receipt of a copy of this common order either from this Court or on production of the same petitioner company, before the Appellate Authority whichever is earlier. Both parties are at liberty to move this Court for any further order/direction in the pending Writ Petition No. 13292 of 1995, depending upon the orders to be passed by the Commissioner, Central Excise, Tiruchirapalli.

10. In the result, Writ Miscellaneous Petition No. 26044 of 1995 is ordered. Writ Petition No. 16337 of 1995 and Writ Miscellaneous Petition No. 25963 of 1995 in Writ Petition No. 16337 of 1995 are dismissed, subject to the direction given in the common order. No costs.