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(2003) 11 AHC CK 0133

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 981 of 1991

Coco Foam Industries APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35
Constitution of India, 1950 — Article 226

Citation : (2004) 91 ECC 210 : (2004) 178 ELT 93

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : Bharat Ji Agarwal, for the Appellant; V.K. SINGH, S.C.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned counsel for the parties.

2. This writ petition has been filed against the orders passed by the Superintendent, Central Excise, Sikandrabad, District Bulandshahr. The impugned order dated 29.11.1989, (Annexure-6) is an order passed by the Superintendent asking the petitioner to apply for a licence for compounded rubber and observe all central excise formalities and clear goods on payment of excise duty. The impugned order dated 1.3.1990 (which is Annexure 9 to the writ petition) asked the petitioner to submit certain information. The impugned order dated 19/20.2.1991 Annexure 11 to the writ petition, asked the petitioner to obtain a central excise licence and submit certain information. The order dated 9.4.1991 (Annexure 19 to the petition) again asked the petitioner to obtain a licence and file classification/price list. The notice dated 26/27.6.1991 again asked the petitioner to obtain licence and fulfil the formalities.

3. All these orders can be challenged before the Commissioner, Central Excise u/ s 35 of the Central Excise Act. Hence the petition liable to be dismissed on the ground of alternative remedy.

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4. It may be mentioned that it has been consistently held by the Supreme Court that it is not proper for the High Court to short circuit the statutory provisions of appeal/revision particularly in tax matters vide Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, (vide paragraph 6 and 11). In paragraph 11 of that delusion it was observed by the Supreme Court that under the scheme of the Act there is hierarchy of authorities before which the petitioner can get adequate redress. The Act provides the complete machinery to challenge the impugned order and hence it can be only challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution.

5. Similarly in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, the Supreme Court observed that Article 226 not meant to short circuit or circumvent the statutory procedure. The Supreme Court also deprecated the practice of granting stay order in tax matters. In the present case there is a clear right of appeal u/s 35 of the Central Excise Act against the impugned order.

6. The petition is therefore dismissed on the ground of alternative remedy. The interim order is vacated.

7. We may also observe that it can only be regretted that this petition was entertained at all when there was a clear alternative remedy. Not only was the petition entertained but an interim order was passed which lasted for about 12 years. Thus, even though this petition is now being dismissed the petitioner has really won the case (though technically losing it) because of the interim order dated 20.7.1991. This Court should exercise restraint particularly in tax matters, and should not ordinarily interfere when there is alternative remedy.

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