(1982) 11 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1341 of 1980

Cosmic Radio APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 23-11-1982

Acts Referred:

Citation : (1984) 3 ECC 184 : (1983) 3 ECR 311 : (1983) 12 ELT 84

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The Petitioners are manufacturers of electronic products known as "Stereo amplifiers" and the petitioners also assemble the products known as "Speaker systems".

2. Prior to March 1, 1975 excise duty was not levied upon the Petitioners'' said products. During the first week of March 1975, the Superintendent and Assistant Collector of Central Excise insisted upon the petitioners'' products being charged to excise duty under Item 37A of the First Schedule to the Central Excises and Salt Act as parts or accessories to gramophone. The petitioners were threatened that unless the excise duty on the said products is paid action would be taken under the provisions of the Central Excises and Salt Act and the Central Excise Rules. The petitioners thereupon filed Miscellaneous Petition No. 323 of 1975 in this Court challenging the action of the Assistant Collector of Central Excise. The Petition was summarily dismissed by the learned single judge by an order dated March 31, 1975 and against the impugned order, the petitioners carried Appeal No. 77 of 1975 before the Division Bench of this Court. The appeal was admitted on May 2, 1975 and on a Notice of Motion the petitioners were directed to deposit the amount of excise duty in this Court and the Government was restrained from taking any steps against the petitioners on the ground that the products of the petitioners were excisable. In pursuance of this order, the petitioners deposited an amount of Rs. 8,79,171.80 in this Court.

3. From June 17, 1977 by amendment of the Tariff Act, the stereo amplifiers and

speakers systems which are manufactured by the petitioners were included in a newly inserted Item 33F in the First Schedule of the Central Excise Act and it is not in dispute that thereafter the petitioners are liable to pay excise duty in respect of the manufacture of the products. The appeal preferred by the petitioners before the Division Bench was disposed of by an order dated March 17, 1978 and the Assistant Collector was directed to give hearing to the petitioners on the issue of excisability of the petitioners'' products for the period from March 1, 1975 to June 17, 1977 and to pass appropriate orders thereafter. The Division Bench also directed that the amount deposited by the petitioners in this Court should be invested in the fixed deposits until further orders.

4. In pursuance of the directions of the Division Bench, the Assistant Collector Mr. V. N. Kullarwar issued a show cause notice to the petitioners on December 16, 1978 and in pursuance thereof the petitioners filed exhaustive reply on January 22, 1979. The petitioners were heard on August 4, and August 24, 1979 by the Assistant Collector and thereafter the Assistant Collector visited the factory on November 28, 1979 to ascertain the mode of manufacture of the products. Thereafter the Assistant Collector has passed an order dated December 31, 1979 holding that the products manufactured by the petitioners were not liable to payment of excise duty during the period from March 1, 1975 to June 17, 1977. The petitioners claim that though they were not communicated with this order, they became aware of the same sometime in March 1980. Thereafter the petitioners addressed a letter to the Assistant Collector on March 20, 1980 enquiring whether such an order is passed and, if so, to furnish a copy thereof. If appears that Mr. Kullarwar who had passed the order on December 31, 1979 retired by about this time and his successor informed the petitioners by letter dated July 14, 1980 that he would hold a fresh enquiry to ascertain whether the petitioners are liable to pay the excise duty. The petitioners feeling aggrieved by the action taken by the Assistant Collector who succeeded to the office of Mr. Kullarwar has approached this Court by filing this Petition under Article 226 of the Constitution of India on November 23, 1980 and claims that the action of the Assistant Collector in re-hearing the matter after final order was passed by Mr. Kullarwar is clearly illegal.

5. The petition was posted for admission before the learned single judge of this Court on November 28, 1980 and the learned Single Judge called for the original file from the office of the Assistant Collector and the same was produced by the respondents'' counsel. The learned single judge admitted the petition by a speaking order and the order clearly indicates that the file produced by the respondents confirms that there is a written order dated December 31, 1979 duly signed by Mr. Kullarwar, the Assistant Collector holding that the products manufactured by the petitioners were not covered by Tariff Item No. 37A and are not liable for payment of excise duty.

6. At the hearing of the petition, on behalf of the respondents a return sworn by Gobindram Parsram Mani, Assistant Collector of Central Excise, has been filed

wherein it is not disputed that Mr. Kullarwar did sign the order in favour of the petitioners on December 31, 1979. Mr. Mehta the learned counsel appearing on behalf of the respondents, claimed that even though Mr. Kullarwar, the Assistant Collector had signed the order, still the order would have no force of law and would not come into operation, as long as the same was not communicated to the petitioners. Mr. Mehta submits that it is open for the successor of Mr. Kullarwar to revise the order and the petitioners can make no grievance about the same. In our judgment, the submission is totally untenable. Mr. Kullarwar, the Assistant Collector of Central Excise was holding the office on December 31, 1979 and has passed a valid order duly signed after hearing the petitioners in pursuance of the show cause notice. Merely because on retirement of Mr. Kullarwar, his successor takes a view that the order passed by Mr. Kullarwar is not correct, is no ground to claim that the order of Mr. Kullarwar has no force of law till it is communicated to the petitioners. The communication of the order passed by Mr. Kullarwar is merely on administrative act and the failure of the respondents to inform passing of such order would not take away the effect of the order of Mr. Kullarwar. The mere fact that the order was never communicated to the petitioners is no ground to hold that the order of Mr. Kullarwar is not in existence. The order passed by the Assistant Collector of Central Excise comes into operation as soon as the same is signed and is not made dependent upon the communication of the same to the concerned party. In my judgment, the stand taken by the successor of Mr. Kullarwar is totally erroneous and his action in issuing fresh show cause notice to the petitioners and calling upon them to re-agitate the matter before him is contrary to the provisions of law. The petitioners, accordingly, are entitled to the reliefs sought in the petition.

7. Accordingly, the petition succeeds and the rule is made absolute in terms of prayer (b) of the petition. As the order passed by the Assistant Collector of Central Excise is in favour of the petitioners, the petitioners are at liberty to approach the Appeal Court for appropriate orders in regard to the refund of the amount deposited in this Court in pursuance of the order dated March 17, 1978. The respondent No. 1 shall pay the costs of the petition.