(1990) 10 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 1855 to 1865 and 1870/90

D.C.M. Limited APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 11-10-1990

Acts Referred:

Citation : (1991) 51 ELT 305

Hon'ble Judges : S.N. Bhargava, J;N.C. Sharma, J

Bench : Division Bench

Advocate : V. Lakshami Kumaren, A.R. Madhav Rao and V. Lodha, for the Appellant; Sudhir Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.N. Bhargava, J.—These writ petitions involve similar facts and questions of law, so they are being disposed of by a common order.

2. Taking the facts of writ petition No. 1862/1990. The petitioner is a Company registered under the Indian Companies Act, 1956 and has got several units throughout the country, out of which two units, known as Shri Ram Vinyl & Chemical Industries and Shri Ram Fertilizer and Chemicals, are located at Kota, in the State of Rajasthan. Shri Ram Vinyl & Chemical Industries has been manufacturing P.V.C. Resin, P.V.C. Compound, P.V.C. Compound MBs, Caustic Soda etc. It has been regularly paying all the demands and dues under the Central Excises and Salt Act, 1944. The petitioner has been selling nearly 70% of its manufactured articles at the factory gate and the remaining nearly 30% through its various depots at Ahmedabad, Calcutta, Delhi, Indore, Nasirabad, Kundli, Ludhiana, Madras and Mira. The excise duty is being paid regularly. For the first time, the respondent No. 3 issued a notice dated 25-8-1984 asking the petitioner to deposit the excise duty on the elements of ''Depot Service Charges'' on the sale of manufactured articles through the various depots of the Company. After the reply submitted by the petitioner, the Assistant Collector, Central Excise, Kota, passed an order dated 7-11-1984, directing the petitioner to

deposit excise duty on the elements of Depot Service Charges. Against this order, an appeal was filed before the Collector (Appeals), Central Excise and Customs, New Delhi, who vide his order dt. 26-4-1985, set aside the order of the Assistant Collector, dated 7-11-1984, as also the show cause notice dated 25-8-1984. Against this order, the Revenue filed an appeal before the Central Excise Tribunal, New Delhi, which was dismissed as having become time-barred. Notwithstanding the orders passed by the Collector (Appeals), respondent No. 3, Supdt. Central Excise, issued a fresh demand giving show cause notice to the petitioner in six cases during 1986-87 and the respondent No. 2 proceeded to pass orders for payment of excise duty on Depot Service Charges and Drum Filling Expenses. The petitioner preferred six separate appeals which were allowed by the Collector (Appeals), Central Excise, vide his order dated 31-3-1987 and 12-5-1986. Still, another set of 12 demands giving a show cause notice was issued by the excise authorities for the period between 1-6-1987 to SI-5-1988 and the Assistant Collector passed an order dated 21-8-1989 confirming the demand raised by the excise authorities. Notwithstanding the earlier decision of the Collector (Appeals), dated 26-4-1985, 12-5-1986 and 31-3-1987, the petitioner was again compelled to file appeals in all these 12 cases before the Collector (Appeals) and those appeals are still pending. Still another set of demand-cum-show cause notice was issued by the Supdt. Central Excise, Kota, on 1-12-1988 for the period June to September, 1988 (Vide Annexure-5). On receipt of the aforesaid notice, the petitioner submitted a detailed reply dated 21-12-1988 pointing out that in view of the earlier orders, passed by the Collector (Appeals), Central Excise and Customs, between the parties and also in view of the latest decision of the Supreme Court in Indian Oxygen Ltd. Vs. Collector of Central Excise, and various decisions of the Central Excise Appellate Tribunal, the notices may be dropped. A date of hearing was fixed which was ultimately adjourned to 12-5-1989.

3. The petitioner submitted a representation on 25-4-1989 that the hearing of the matter on the show cause notice be kept in abeyance till the decision was given by the Tribunal in the appeals (vide Anx. 7). Another representation was also submitted on 28-4-1989 requesting the Assistant Collector not to proceed with the hearing. But the said representations of the petitioner were rejected and the petitioner was asked to attend the hearing on 12-5-1989. Thereupon, several writ petitions had been filed in this Court on 8-5-1989 by the petitioner. Notices were issued to the respondents as to why the writ petition be not heard and disposed of. Meanwhile, further proceedings in pursuance of the notice dated 1-12-1988 were stayed.

4. Thereafter, demand-cum-show cause notices were issued by the respondent No. 3 on 9-8-1989 for the period between April, 1989 to June, 1989 (Anx.I). The petitioner submitted a detailed reply dated 6-9-1989 (Anx. 2) before the respondent No. 2 and again pointed out that in view of the earlier orders passed by the Collector (Appeals) and also in view of the latest law laid down by the Hon''ble Supreme Court in Indian Oxygen Ltd. (supra) and the various decisions of the Central Excise Appellate Tribunal, the notice was wholly unjustified and the

proceedings may be dropped. The Department informed vide their notice dated 12-2-1990 fixing the date of hearing as 22-3-1990. The petitioner moved an application on 15-2-1990 requesting respondent No. 2 to hold the personal hearing in abeyance. Notwithstanding this application, the respondent No. 2 insisted for hearing the matter and passing an order inspite of the fact that this Court had stayed further proceedings in pursuance of the show cause notice issued in earlier set of writ petitions on 11-5-1989 and therefore, the petitioner filed the present set of writ petitions, along with stay petition on 11-4-1990, but the petitioner could not obtain the stay order from this Hon''ble Court because of the strike by the advocates in the High Court. The petitioner then moved an application on 30-4-1990 requesting the Assistant Collector not to pass any order but his request was turned down and an order was passed on 8-5-1990, raising demand from the petitioner. Thereafter, the petitioner filed an application enclosing its earlier application dt. 30-4-1990, the order passed by the Assistant Collector on 8-5-1990 and also the second stay application, praying for stay of operation of the order dated 8-5-1990. At the time of arguments, it was submitted by the learned counsel for the petitioner that they have not filed appeal against the order dated 8-5-1990 passed by the Assistant Collector.

5. These writ petitions came up for admission on 17-5-1990 when the notices were issued to show cause as to why these writ petitions should not be admitted and disposed of, and in the meanwhile, recovery in pursuance of the order dated 8-5-1990 was also stayed. Arguments were heard at length in these writ petitions also along with the earlier set which is being disposed of by a separate order and therefore, it is not necessary to mention the arguments in detail in this order.

6. While allowing the writ petitions filed by the petitioners in the year 1989, we have observed that the Depot Service Charges and unloading charges can not be included towards assessable value for the purpose of payment of central excise duty when the price at the factory gate was ascertainable. Therefore, we have quashed the show cause notices issued by the respondent No. 3.

7. In the present set of writ petitions also, the facts are absolutely identical and similar.

8. For the reasons given in our order dated 11-10-1990 passed in Writ Petition No. 1849/1989 and seven other writ petitions, we hereby allow these writ petitions, quash the notice dated 9-8-1989 (Annexure-1) as also the order dated 8-5-1990 (Anx. 6) passed in pursuance of the notice, during the pendency of the writ petitions. No order as to costs.

