
(1994) 09 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Special Appeal No. 298/92

Derby Textiles Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 128
Rajasthan High Court Ordinance, 1949 — Section 18

Citation : (1994) 74 ELT 815 : (1994) 2 RLW 524 : (1995) 1 WLC 510

Hon'ble Judges : Gokal Chand Mital, C.J;N.K. Jain, J

Bench : Division Bench

Advocate : B.L. Purohit and J.L. Purohit, for the Appellant; P.P. Choudhary and S.S. Lal, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—These special appeals, filed u/s 18 of the Rajasthan High Court Ordinance, 1949 are directed against the common order of the learned Chief Justice dated 8-4-1992 dismissing seven writ petitions and the order dated 16-4-1992, and the orders dated 23-4-1992/21-5-1992 passed by the learned Single Judge whereby on the basis of the said order he has dismissed seven writ petitions.

2. Since all these appeals raise a common question of law and fact filed by the same petitioner, so they are being disposed of by this common judgment. Though appeals arising out of the common order passed in S.B.C.W. Petition No. 2602,2604 and 2606 of 1986 are not before us.

3. The facts which are necessary for the disposal of these special appeals as alleged in D.B. Special Appeal No. 298/92 are that the petitioner-appellant is a private limited Company registered under the Companies Act and engaged in the business as exporters, importers and manufacturers having its registered office at Jodhpur. The petitioner-appellant Company manufactures synthetic yarn,

imports as raw material, "Polyester Staple Fibre". It is alleged that the appellant Company imports Polyester Staple Fibre for the manufacture of yarn. The customs authorities are classifying Polyester Staple Fibre as customs Tariff Item No. 5503.20 and Excise Tariff Item No. 5501.20 for the purpose of assessing the duty payable by the petitioner on the Polyester staple fibre imported by the Company. The petitioner appellant Company was asked to pay custom duty on 145% ad valorem which was challenged before the learned Chief Justice contending that under the various notifications issued by the Central Government, the goods falling within Chapter 55 have been exempted and the "Polyester Staple Fibre" which is also covered by Chapter 55 can be charged customs duty @ 100% ad valorem. It was also prayed that assessment contained in Ex. 2 may be quashed and a direction may be issued to the respondents to assess the custom duty payable by the petitioner as per notification-1 on Polyester Staple Fibre at 100% ad valorem and not at 145 plus Rs. 9/- per Kg. The learned Chief Justice (as he then was) dismissed the writ petitions on the ground that the petitioner can very well pursue its remedy under the Customs Act vide order dated 8-4-1992 but on the prayer made by the counsel for the petitioner, directed that if the appeal is preferred within two months from today before the Authorities entitled to receive the same, it shall not be dismissed on the ground of limitation. Instead of approaching the concerned authorities, the petitioner has preferred this special appeal on 25-5-1992 and pending since then at the admission stage and no stay has been granted.

4. Mr. Purohit, learned counsel for the petitioner-appellant has contended that the learned Chief Justice has erred in dismissing the petitions on the ground of alternative remedy since it is not a Bar before the High Court to decide writ petition. He has also contended that the learned Chief Justice (as he then was) has erred in observing that without first getting the final order from the Appellate Authority on the facts as to what type of staple fibre was and whether it was covered by Entry 3, it was not possible to give the benefit since there is no dispute regarding the type of the staple fibre in the case at all. Counsel for the petitioner-appellant has also stated that now the appellant Company has deposited the demand as per assessment. Learned counsel for the petitioner-appellant has placed reliance on Hindusthan Safety Glass Works Limited Vs. Central Board of Excise and Customs and Others, :Rajendra Singh v. The Municipal Board, Nagpur and Raj Pack Well Ltd. Vs. Union of India (UOI),

5. Mr. Choudhary has supported the order of the learned Chief Justice (as he then was) submitting that the special appeals are not maintainable.

6. We have heard learned counsel for the parties and perused the material on record and cases cited at Bar.

7. It is well settled that when impugned order is per se without jurisdiction it is always open to the High Court to entertain a writ petition notwithstanding the fact that there is an alternative statutory remedy otherwise if there is alternative remedy the High Court should not exercise discretion under Article 226. It is also

settled that if the writ petitions are admitted and pending and heard on merits they should not be dismissed on the ground of existence of an alternative remedy as there is no absolute bar to its maintainability. Thus, the ratio of the authorities cited cannot be disputed but no hard and fast rule of the application can either be enunciated or evolved and each case depends upon the facts of its own.

8. In the instant case, the petitioner sought the benefit of Notification Anx. 1 and a contention was raised before the learned Chief Justice (as he then was) that there were no dispute on the basic facts but the same was opposed by the non-petitioner stating that whether the exemption given to the petitioner by Anx. 1 falls under the omnibus class "3" was one which was required to be departmentally decided by the authorities entitled to look into the facts and to decide the same. Thus, the learned Chief Justice (as he then was) has observed that the nature and character of the commodity concerned could be better examined and finding be recorded for applying Anx.1, the exemption notification. The learned Chief Justice (as he then was) has also observed that the facts do not fall within the scope of writ jurisdiction to determine the question about entitlement of Anx. 1 to get the benefit of exemption. Admittedly, the petitioner, without approaching the concerned authorities has directly rushed this Court by means of writ petition against Ex. 2 for getting benefit of exemption in view of Anx. 1. But to our mind the controversy raised in these appeals involves investigation into the facts for which undisputedly writ jurisdiction cannot be invoked particularly when there is a statutory remedy, available to the petitioner. At the cost of repetition, we would like to quote the authority referred by the learned Chief Justice (as he then was) reported in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, wherein it has been observed as under :-

"Article 226 is not meant to short circuit or circumvent statutory procedure. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situation, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution."

9. As already stated the petitioner-appellant has not challenged the vires of any provision nor satisfied the Court that the statutory remedy is entirely ill suited to meet the demands of extraordinary situation and has only challenged notice seeking benefit of Anx. 1. In view of the above, the learned Chief Justice (as he then was) in the exercise of its discretion has rightly declined to interfere. The discretion so exercised in the given case is neither arbitrary nor illegal. We are in agreement with the view taken by the learned Chief Justice (as he then was).

10. We have been informed that the petitioner-appellant has deposited the amount demanded alongwith interest after the decision dated 8-4-1992, so the question now remains is of refund of the amount so deposited, which can only be

made after it is held by the appropriate authority that the petitioner-appellant is entitled for the benefit of exemption in view of Anx. 1 and the demand raised was illegal, and while sitting in appeal it would not be proper for us to decide the same, as the assessment order is appealable which is clear from Section 128 of the Customs Act which reads as under :-

"Section 128. - Appeals to Collector (Appeals). - (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Collector of Customs may appeal to the Collector (Appeals) within three months from the date of the communication to him of such decision or order..."

A bare perusal of the said section makes it clear that the petitioner had an alternative remedy at the point of time when the assessment order is passed but the appellant Company did not avail the same even after the order of the learned Chief Justice (as he then was). However, in the interest of justice, we grant 15 days time from the date of receipt of certified copy of this judgment, to the petitioner-appellant to avail the remedy according to law.

Under these circumstances this Court will not allow the petitioner to circumvent the statutory remedy by seeking relief in the extraordinary jurisdiction. The impugned order of the learned Chief Justice (as he then was) calls for no interference. Thus, no relief can be granted. All the special appeals stand dismissed.

11. It is pertinent to note that cause of action arose at Bombay and the assessment order has also been passed there. The demand was raised at Bombay and the resultant dispute of the demand would have involved going in Appellate Authority, Collector and then CEGAT and then to Hon'ble Apex Court. Thus, it also involves point of territorial jurisdiction. Keeping in view these facts, a Division Bench of this Court formulated two points vide order dated 6-8-1992 and directed the appellant to show (i) whether the appeal has been filed by him as directed in the impugned order? (ii) As to how the writ petition could be filed in this Court when the cause of action arose at Bombay? But the Counsel for the appellant has not addressed the Court on these two points. However, since the special appeals have been dismissed, as observed above, we need not go into the aforesaid points.

12. Before parting with the case, it will not be out of place to mention here that no assistance whatsoever has been provided by the other side in this case throughout, which is clear from the impugned order dated 8-4-1992 of the learned Chief Justice (as he then was) wherein he has observed that "It is regrettable that no counter affidavit or reply has been filed on behalf of the respondents putting forth its view point to the claim set up by the petitioner in this writ petition." Before Division Bench also on 22-11-1993, counsel for the respondent took time to file reply to the petition. Again on 25-2-1994 this Court granted time to file reply to the writ petition. On 4-4-1994 one last opportunity

of four weeks was granted with a mention that no further adjournment will be granted. Mr. Choudhary was granted eight weeks time to file reply on 9-5-1994. Ultimately on 8-7-1994 the Court observed that "No reply inspite of seeking time has been filed. Therefore, the reply is closed." These orders passed by single Bench as well as by Division Benchs make it clear that the tendency of the other side of not filing reply despite numberless opportunities taken by them, needs immediate attention by the authorities concerned, so as to give proper assistance to the Court in disposal of the case within a reasonable time.

13. In view of what we have discussed above, we do not find any error or illegality in the order passed by the learned Chief Justice and the special appeals deserve to be dismissed.

Consequently, these special appeals have no force, and the same are hereby dismissed. A copy of this order be sent to the respondent No. 2.