
(1997) 03 MP CK 0051

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1007 of 1991

Diamond Cement

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35L
Constitution of India, 1950 — Article 14

Citation : (1997) 93 ELT 685

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : Vivek Tankha, for the Appellant; A.K. Gohil, C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.—Petitioner by this petition has prayed that by appropriate order or direction, the order passed by the Assistant Collector, Central Excise dated 3-2-1990 may be struck down and the order dated 12-9-1990 of the Collector of Central Excise Indore/Delhi and the order passed by the CEGAT [Customs, Excise and Gold (Control) Appellate Tribunal] dated 5-2-1991 may be quashed. It is also prayed that the proviso "during the aforesaid period" as appearing in the Notifications Nos. 124/87 and 36/87 may be declared ultra vires, being violative of Article 14 of the Constitution.

2. Brief facts which are necessary for disposal of the petition are that the petitioner has established a factory at Narsingharh in Damoh District for manufacture of portland cement. The production of clinker and cement from the factory started as under :-

- (i) first clinker plant at village Narsingharh on 11-4-1982,
- (ii) second clinker plant at village Narsingharh in October, 1988, and
- (iii) cement plant at village Imlai on 5-1-1983.

It is alleged that the clinkers produced in both plants were sent to the cement factory for manufacture of cement. Central Excise duty is payable on cement under the Central Excise Tariff Act, 1985 under Heading 85, sub-heading 2502. For the purpose of Central Excise duty, cement factory is classified into three categories treating the period from 1981 to 1990, as under :-

- (i) cement units which started production before 1-1-1982,
- (ii) cement units which started production after 1-1-1982 but before 31-3-1986; and
- (iii) cement units which started production on or after 1-4-1986.

3. The Government of India issued two Notifications Nos. 36/87, dated 1-3-1987 and 124/87, dated 24-9-1987 and by virtue of these Notifications certain concessions were granted in excise duty, but the Assistant Collector of Central Excise, Sagar declined to grant concession in excise duty and raised a demand of Rs. 20,53,632.00. However, the factory deposited a sum of Rs. 5,00,000.00 on 31-3-1990. The Assistant Collector held that the cement produced by the factory at Imlai out of the clinkers produced by the unit of 88 attracts duty and no concession is available to the cement factory.

4. Aggrieved by the above order, an appeal was filed before the Collector, Central Excise, New Delhi, which was rejected and ultimately the petitioner filed an appeal before the CEGAT which dismissed that appeal. However, the petitioner has filed this petition challenging the Notifications and orders of the Central Excise Authorities.

5. So far as the order passed by the Assistant Collector of Central Excise is concerned, that the already merged with the order passed by the Central Excise and the CEGAT and the order of the CEGAT has been challenged by amending this petition. Against the order of the CEGAT, there is a regular appeal proceeded u/s 35L(b) of the Central Excises and Salt Act, 1944. Therefore, the petitioner has a remedy of appeal and that has not been filed by him. Therefore, so far as the order of the CEGAT dated 5-2-1991 is concerned, it cannot be gone into.

6. Now coming to the question of Notifications Nos. 124/87 and 36/87 as being ultra vires of Article 14 of the Constitution is concerned, we have also gone through both these Notifications and we are of the opinion that nothing substantial has been brought to show that they suffer from vice or discrimination. The Notifications lay down certain modes in which concession has to be given and the Assistant Collector of Central Excise has found that the incumbent is not entitled to that benefit and accordingly the same has been denied to him. We do not find that both these Notifications suffer from any vice or discrimination so as to declare them ultra vires.

7. There is no merit in this petition. It is accordingly dismissed. Security amount, if deposited, be refunded to the petitioner.