

(1987) 12 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 3284 of 1987

Echjay Industries Pvt. Ltd

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-12-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37B
Constitution of India, 1950 — Article 226

Citation : (1988) 15 ECC 272

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;G.T. Nanavati, J

Bench : Division Bench

Judgement

G.T. Nanavati, J.—Petitioner No. 1 is a private limited company; and petitioner No. 2 is its director. Since 1971, the petitioner-company manufactures certain items and roughly shaped pieces by forging of iron and steel. The petitioners challenge in this petition, the order passed by the Assistant Collector on the classification list dated March 9, 1987; and have prayed for other consequential reliefs.

2. With respect to the items manufactured by them, the petitioners have been filing classification lists from time to time; and the Assistant Collector of Customs and Central Excise and the Superintendent of Central Excise, respondents Nos. 3 and 4 respectively and their predecessors-in-office have been approving the same. Certain items manufactured by them are subject to payment of central excise duty and certain items manufactured by them are totally exempted from the payment of such duty. Steel forgings manufactured by the petitioners are as per customer's forging drawing and proof-machined when so desired. They are forged as per customer's demands so that the same can be used by the customers as raw material for the manufacture of machined components such as crank shafts, axle, tubes, axle shafts, welding bubs, etc. Prior to March 1, 1986, the items which the petitioners are describing as pieces roughly shaped by forging were covered by item No. 26AA of the First Schedule to the Central Excises and Salt Act, 1944 (hereafter referred to as "the Act"). By notification

No. 206/63 dated 30-11-1963 iron and steel products falling under sub-item No. (ia) of item No. 26AA were exempted from payment of duty. Because of this notification, the petitioners were not liable to payment of duty on the said products manufactured by them. In August, 1983 the tariff relating to iron and steel and articles of iron and steel was rationalised and new tariff item 25 was introduced and substituted for the then existing tariff item No. 25 and 26AA. Forgings manufactured by the petitioners used to be classified under sub-item (8) of item 25. The exemption granted by the aforesaid notification continued. On the basis of the harmonised coding system, popularly known as H.S.N., several items mentioned in the Schedule were rearranged and reorganised under minute headings. Chapter 72 deals with iron and steel. The case of the petitioners is that the forgings manufactured by them clearly fall under tariff item No. 7208 00. It is also their case that the exemption granted earlier continues as a result of appropriate modifications made in notification No. 208/83 dated 1-8-1983 (See [1984] 1 ECC 24). It is also the case of the petitioners that their classification list wherein they have described their steel forgings as falling under item No. 7208.00 was verified and approved by the Superintendent. In view of the new Budget of 1987, the petitioners were advised to file a fresh classification list; and, therefore, on 9-3-1987 they filed two classification lists for approval of the excise authorities. One was in respect of forgings proof machined. They were approved by the Inspector of Central Excise and also by the Superintendent of Central Excise; and thereafter they were forwarded to the Assistant Collector for his approval. Thereafter some correspondence ensued. On 9-6-1987, the Superintendent of Central Excise called upon the petitioners to file a revised classification list showing forgings manufactured by them which were till then classified as falling under tariff item No. 7208.00 as falling under tariff item No. 7308.90. Similar direction was also given by the Superintendent again on 16-6-1987. Both the said communications of the Superintendent are at Annexures "D" and "G" to the petition. The petitioners protested and maintained that the classification list submitted by them is proper. The Superintendent thereafter with his letter dated 2-7-1987 (Annexure "J") returned the classification list dated 9-3-1987 containing the order dated 30-6-1987 passed by the Assistant Collector, changing classification of the petitioners' products described as roughly shaped pieces of forgings from tariff item No. 7208.00 to tariff item No. 7308.90 with effect from 1-3-1986.

3. The case of the petitioner is that the directions which were given by the Superintendent by his letters at Annexures "D" and "G" and the order passed by the Assistant Collector dated 30-6-1987 were in pursuance of the directions contained in the telex issued by the Central Board of Excise and Customs dated 4/5-6-1987 Annexure "K" to the petition; and thus, the decisions taken by the Superintendent and the Assistant Collector are based on extraneous considerations, and not because of any change in the nature of the forgings manufactured by the petitioners or change in law. It is also their case that the Assistant Collector could not have changed the classification without following the

procedure prescribed in that behalf; and, therefore, the said orders are without jurisdiction. The petitioners also contend that the orders passed by the Assistant Collector deserve to be quashed as they have been passed without affording any opportunity of hearing to the petitioners; and thus, they are violative of principles of natural justice. On merits, it is the contention of the petitioners that the forgings manufactured by them which are roughly shaped pieces of forgings are really classifiable under tariff item No. 7208.00 and not under tariff item No. 7308.90. The petitioners, therefore, want this Court, to quash the directions contained in the telex of the Board at Annexure "K" to the petition and also the directions contained in the letters dated 9-6-1987 and 16-6-1987 (Annexures "D" and "G" to the petition) and the orders dated 30-6-1987 passed by the Assistant Collector, (Annexure "J" to the petition). They also want a declaration from this Court that the classification list dated 1-3-1986 filed by them is still operative and the steel forgings described by them as pieces roughly shaped by rolling or forging of iron or steel are classifiable under tariff item No. 7208.00 and not tariff item No. 7308.90.

4. After this petition was filed, the Superintendent of Central Excise, respondent No. 4 served on the petitioner a notice-cum-demand dated 6-7-1987 (Annexure "L") issued u/s 11A of the Act demanding payment of differential duty for the period between 1-1-1987 and 30-6-1987. By a subsequent amendment, this demand notice is also challenged by the petitioners. By another communication of the same date, i.e., 6-7-1987 (Annexure "M") the Superintendent called upon the petitioners to furnish particulars as regards forgings cleared by them from 1-3-1986 to 31-12-1986. This direction is also challenged by the petitioners.

5. Mr. S.D. Shah, the learned Counsel appearing for the respondents, contended that this Court should not entertain this petition under Article 226 of the Constitution of India, as the petitioners have an alternative and efficacious remedy under the Act. He submitted that the question involved in this petition is with respect to proper classification and it can more effectively be decided by the authorities constituted under the Act. He also submitted that the petition involves disputed questions of fact and for that reason also, this Court should not entertain this petition under Article 226 of the Constitution, Mr. Shah fairly conceded that though the petitioners were not given a hearing in the sense that they were not formally called upon to show cause against the proposed change, they were made aware of the action which the respondents wanted to take and the reasons for the same. He, therefore, submitted that the principles of natural justice can be said to have been substantially complied with in the present case. Mr. Shah also conceded that the instructions contained in the Board's telex Annexure "K" will not bind the authorities while exercising quasi-judicial functions. However, he submitted that it is open to the quasi-judicial authorities to rely upon those instructions and adopt them as the basis of their action.

6. Even though Dr. Kantawala, the learned Counsel appearing for the petitioners strenuously contended that the forgings manufactured by the petitioners fall

under tariff item No. 7208.00 and that the classification once accepted cannot be changed or modified unilaterally, without getting it set aside by approaching the appellate authority, agreed to the suggestion made by the Court that the question regarding proper classification should be decided by the appropriate authorities under the Act if directions are given by this Court to the concerned authorities to decide that question without in any manner being influenced or feeling bound by the Board's telex at Annexure "K". Mr. Kantawala also submitted that in that case, this Court should also observe that H.S.N. Method is not adopted by the Legislature for the purpose of classifying iron and steel and other allied products and articles and that the method of classification as adopted by the legislature and the speech delivered by the Finance Minister while introducing the change should be taken into consideration while determining the question regarding proper classification of the products manufactured by the petitioners. In view of this fair approach adopted by the learned Counsel for the petitioners, it is not necessary to go into the question of proper classification of the forgings manufactured by the petitioners; and only the contentions regarding binding nature of the Board's telex at Annexure "K" and the legality and validity of the orders passed by the Assistant Collector on the classification lists are required to be considered.

7. It is an admitted fact that petitioners' products, with which we are concerned in this petition were prior to 1-3-1983 classified as falling under item No. 26 A A which read as under:

26AA. Iron & Steel products, the following, namely:--

(i)

(ia) Bars, rods, coils, wires, joists, girders, angles, other than slotted angles, channels, other than slotted channels, tees, beams, zeds, trough, piling and all other rolled, forged or extruded shapes and sections not otherwise specified." It is also admitted fact that in view of the notification No. 206/63 dated November 30, 1963 they were exempted from payment of excise duty. After 1-3-1983 they were classified as falling under tariff item No. 25(8) which read as as under:

pieces roughly shaped by rolling or forging of iron or steel not elsewhere specified.

The exemption enjoyed by the petitioners continued as a result of the notification No. 208/83, dated August, 1, 1983 (See [1984] 1 ECC St. 24). Even after the introduction of the new Central Excise Tariff Act on 1-3-1986 petitioners' products were classified under tariff item No. 7208.00 and the classification was approved by the concerned Superintendent of Central Excise. A question was raised before us as to whether the said approval given by the Superintendent can be said to be a valid approval. On the one hand it was contended by Dr. Kantawala that the Superintendent being a proper officer he had the jurisdiction and power to give approval; and the approval granted by him should be regarded as valid. On the other hand it was contended by Mr. Shah that in view of the

Board's directions contained in circular letter F. No. 261/4/45/72-CX-8 which were certainly binding on the Superintendent, he ought not to have granted the approval and, therefore, such approval must be regarded as invalid. In our opinion, the approval granted by the Superintendent cannot be said to be without any authority of law. The instructions contained in the Board's circular are really administrative directions; and though they are binding on the subordinate officers, cannot render the action taken by the proper officer as without any authority of law. These instructions are meant for internal administration. Moreover, approval granted by the Superintendent was not objected to by any higher officer; and to the knowledge of all concerned, the petitioners' products were allowed to be cleared throughout the year as products falling under tariff item No. 7208 00. This position continued in spite of some controversy raised regarding proper classification of those items in November 1986 as disclosed by the letter dated 12-11-1986 of the Assistant Collector, Annexure II to the affidavit-in-reply filed by K.S. Mahant, Assistant Collector of Central Excise, Rajkot. However, in view of the course which the parties have agreed to adopt, it is not necessary to consider the effect thereof any further.

8. As regards Board's telex Annexure "K" it is obvious that it cannot bind the quasi-judicial authorities. Section 37-B of the Act which reads as under leaves no doubt about the same;

37-B. Instructions to Central Excise Officers.--The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:

Provided that no such orders, instructions or directions shall be issued:

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Collector of Central Excise (Appeals) in the exercise of his appellate functions.

It is also not disputed that when the authorities are called upon to give approval to a classification list, they are required to perform quasi-judicial functions. Realising this position of law, K.S. Mahant, Assistant Collector in his reply affidavit has stated as under:

...that guidelines referred to by the petitioners are only clarificatory in nature and are issued to administrative heads...the guidelines have no binding effect and even the administrative heads are not bound to follow the same... the quasi-judicial bodies like appellate authority and the Tribunal are not under any

circumstances bound by such guidelines and there are a large number of cases where the guidelines are either not followed or are found to be illegal.

9. We, therefore, hold that the instructions or guidelines contained in the Board's telex Annexure "K" being in the nature of administrative instructions, are not binding on the authorities performing quasi-judicial functions; and, therefore, the Assistant Collector while considering the question of granting approval to the classification list dated 9-3-1986 ought not to have allowed himself to be influenced by the same and should not have changed the classification feeling bound by those directions. No doubt, an attempt was made before us to show that the decision which the Assistant Collector had taken was an independent one. It becomes obvious from the two letters which came to be written soon after the Board's telex and the correspondence between the parties that the directions which the Superintendent gave by his two letters at Annexures "D" and "G" and the order which came to be passed by the Assistant Collector Annexure "J" are the result of the instructions contained in the said telex Annexure "K". For this reason and also because the petitioners were not heard before making any change in the classification, the orders dated 30-6-1987 passed by the Assistant Collector deserve to be quashed and set aside.

10. It was contended by Dr. Kantawala that before changing the classification, the Assistant Collector ought to have heard the petitioner. He submitted that the previous correspondence between the parties cannot be regarded as an opportunity of hearing. He submitted that in fairness, the Assistant Collector ought to have fixed the matter for hearing after the representation dated 22-6-1987 (Annexure H) was received by him. Having gone through the letters written by the authorities in this behalf, we are of the opinion that the petitioners cannot be said to have been given an opportunity of hearing for showing cause as to why classification should not be changed. As a result of the change in the classification, the petitioners are bound to be adversely affected. It was, therefore, necessary for the Assistant Collector to afford an opportunity of hearing to the petitioners before changing the classification. Since that has not been done, the orders dated 30-6-1987 passed by the Assistant Collector deserve to be quashed and set aside.

11. Though we are not inclined to decide the question of proper classification, it becomes necessary to observe that H.S.N. method has not been adopted completely and in respect of all the items. Therefore, merely because some change has been made in the H.S.N. method, that would not necessarily mean that the classification under the Act can be made according to the change in the H.S.N. The excise authorities must decide the question of proper classification after examining which system has been adopted by the Legislature for the purpose of classification of a particular item, the scheme of the Act, and also in light of the speech delivered by the Finance Minister while introducing the change in the method of classification in the year 1986. We direct the respondents to consider this aspect while deciding the question of proper classification of the

items manufactured by the petitioners.

12. In the result, this petition is partly allowed. The orders passed by the Assistant Collector dated 30-6-1987 (Annexure "J") contained in the classification lists dated 9-3-1986 (Annexure "C" to the petition) are quashed and set aside. In view of the subsequent orders passed by the Collector and in view of what we have observed above, it is not necessary to grant any relief with respect to the two letters written by the Superintendent on 9-6-1987 and 16-6-1987 Annexures "D" and "G" respectively. As we are quashing the orders dated 30-6-1987 passed by the Assistant Collector, as a necessary consequence, the show cause-cum-demand notice dated 6-7-1987 Annexure "L" and the letter dated 6-7-1987 Annexure "M" are also quashed. Rule is accordingly made absolute to the above extent only, with no order as to costs. The Assistant Collector shall now proceed further with the process of scrutiny and grant of approval to the classification lists filed by the petitioners.