

(1974) 01 AHC CK 0021
In the Allahabad High Court
Case No : Civil Miscellaneous Writ No. 4243/71

Elgin Mills Compny Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-01-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (1978) 2 ELT 43

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.S.P. Singh, J.

1 The petitioner is an incorporated company and carries on business of manufacturing and selling cotton textiles. Excise duty is leviable on various qualities of cloth manufacturing by the company. The Union of India by Notification No. 111/62 of the 13th June, 1962 fixed different rates of excise duty on grey and processed cloth. This notification was subsequently clarified by Revenue letters F. No. 4/16/62-CXVII-dated, 11th July, 1962, whereby it was stated that scoured cloth would be taxable at the duty applicable to grey cloth. It appears that duty was being charged for scoured cloth at the same rate as on processed cloth, which duty was higher than that of grey cloth. The petitioner made representations against this enhanced duty, but the Excise Inspector continued to issue demand notices in respect of scoured cloth at the rates applicable to processed cloth. The petitioner being unable to obtain relief at the hands of the Department filed suit Nos. 38 of 1967 and 87 of 1968 against the Union of India for recovery of Rs. 34,840.60 and Rs. 41,112.65. These suits covered the duties collected upto 1963. The suits were decreed on 23.12.1968, and two appeals have now been filed by the Union of India in this court, and are still pending. In spite of the decision in the Civil suit, demand at the rate applicable to processed cloth was made against the petitioner for the period

subsequent to 1963, and various notices were also issued. Objections were filed by the petitioner to these demands before respondent No. 2, but they were dismissed on 1.3.1966. An appeal filed before the respondent No. 1 was likewise dismissed on 10.11.1966. The petitioner filed a revision before respondent No. 1 which was allowed on 30.5.1967. In consequence of this order, the petitioner got refund for the periods covered by the objections and the appeals. In spite of the decision, respondent No. 3 persisted in continuing the demand at enhanced rates, on the basis that scoured cloth was processed cloth. Objections against such claims were filed by the petitioner before the Assistant Collector, Central Excise. In some cases, the objections being dismissed, appeals were filed before respondent No. 2. The appeals pending before respondent No. 2 for the period 1965 to 1967 have not yet been decided. The Petitioner prays for a mandamus directing the respondent No. 2 to decide these appeals.

2. The Collector of Central Excise when he hears an appeal discharges a quasi judicial function. It is true that justice delayed is justice denied. Courts and Tribunals have a duty to decide pending cases as expeditiously as is possible in the circumstances of the case. It would be an obvious denial of justice to a litigant in case suits or appeals by him before appropriate judicial authorities are purposely postponed, although there is no impediment to their decision. In the counter-affidavit filed in the present case, there is no satisfactory explanation for refraining to decide the appeals preferred by the petitioner. The only ground taken is, firstly, that the petitioner has not given the appeal numbers of the various appeals filed by him, and secondly that it would not be appropriate to decide the appeals in view of Section 10 of the Code of Civil Procedure. The objection based on Section 10 of the CPC is futile, as Section 10 applies only to suits filed before courts and does not apply to cases where a particular issue is pending before a statutory appellate authority and identical questions are before a legally constituted court. The other ground about the lack of details of the appeals also appears to be lame one, as it is not tantamount to denying that appeals have not been preferred by the petitioner. Thus, there does not appear to be any valid justification in law for the respondent No. 2 not deciding the appeals filed by the petitioner. In action of the nature disclosed in the case is not conducive to the maintenance of confidence of the litigant public in Tribunals constituted under special Acts. Although the Collector of Central Excise is entrusted primarily with administrative, powers yet in as much as he exercises quasi judicial functions while disposing of appeals, his conduct at this stage must conform to rules of fair play, and must be such as to install faith in his objectively of approach to the cause before him. The undue delay in the decision of the appeals preferred by the petitioner is not commendable.

3. The writ petition is accordingly allowed, and the respondent No. 2 is directed to decide the appeals preferred by the petitioner within a period of six weeks from the date on which the petitioner submits detailed particulars of the appeals before him. The petitioner is entitled to its costs. A copy of this order shall be sent immediately to the respondent No. 2 for early compliance.