

(2002) 07 MP CK 0083

In the Madhya Pradesh High Court

Case No : Writ Petition No. 351 of 2002

F.C.L. Technologies and Products Ltd.

APPELLANT

Vs

Chief Commissioner, Customs and Central Excise and Others

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 57CC
Constitution of India, 1950 — Article 226

Citation : (2003) 85 ECC 147 : (2002) 4 MPHT 237 : (2002) 3 MPLJ 585

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : J.P. Gupta and Tapan Trivedi, for the Appellant; T.C. Singhal, Sr. Standing Counsell, for the Respondent

Judgement

Rajendra Menon, J.

The petitioner, a Public Limited Company engaged in the manufacture of polyester chips has filed the instant petition praying for quashing the show-cause notice, Annexure P-2, dated 30-8-2001 issued by the Commissioner, Central Excise, M.P., Indore. It is the case of the petitioner that they have a factory manufacturing polyester chips both on its own for sale as well as on job work. According to them, their unit is situated at Malanpur, District Bhind, M.P. The main raw material in the manufacture of the aforesaid polyester chips is DMT/PTA and MEG. It is their contention that they manufacture polyester chips falling under the CET sub-heading 3907.60 from the aforesaid raw material. The raw material is purchased by the petitioner and is also supplied by the parties, placing orders with the petitioner for the purpose of manufacturing of polyester chips out of the aforesaid raw material and supplied by them as job work.

The petitioner contends that they manufacture polyester chips out of the raw material supplied by other parties for the purpose of processing the job work in terms of Notification No. 214/86, dated 25-3-1986 and no credit has been taken by the petitioner. In fact, the polyester chips in this case is in the hands of the

petitioner as an intermediate products because the said chip is not sold in the market as such by the parties placing orders with the petitioner but the same are inputs in the manufacture of polyester film which is the ultimate final product. As far as the polyester chips manufactured by the petitioners are concerned, they are paying duty as applicable under the Central Excise Act and are cleared by them and marketed after they have been manufactured out of DMT/PTA and MEG purchased by the petitioner on their own and sold by them in the market as a finished goods. It is, therefore, the case of the petitioner that for the goods sold by them, excise duty is being paid but for the conversion of DMT/PTA and MEG into polyester chips which are supplied to them by M/s. Flex Industries Limited, Noida (hereinafter referred to as "Noida Company"), no duty is payable as the raw material is supplied to the petitioner free of cost by the aforesaid company for the purpose of processing the job work in the manufacturing of polyester chips. It is further averred by the petitioner that they do use other minor inputs and catalyst in the discharge of the aforesaid job work. However, it is of very negligible value. According to the petitioner, the polyester chips manufactured by them on job work for the Noida Company are made out of the DMT/PTA and MEG supplied by this company, they are not liable to pay duty at the rate of 8% under the provisions of Rule 57-CC of the Central Excise Rules, 1944 because the job work uses certain modvated inputs in very minor quantity from their own account. It is the case of the petitioner that the provisions of Rule 57-CC is not applicable in their case because they are not engaged in the manufacturing of a final product. The polyester chips are not the final products. The final product is polyester film which is manufactured by the Noida Company and at whose instance DMT/PTA and MEG is sent to the petitioner for conversion into polyester chips. It is further their case that the manufacturer would have taken on the modvat credit on the inputs and as the petitioner has not taken any modvat credit on the inputs supplied to them by the Noida Company for the job work, no duty is payable and Rule 57-CC is not applicable. That apart, it is further submitted that there is no sale of goods at the time of clearance from the factory.

As the aforesaid ingredients are necessary therefore, Rule 57-CC of the Central Excise Rules, 1944 will not be applicable. It is submitted that the show-cause notice is unsustainable. It is the further case of the petitioner that in view of the Collectorate Trade Notice No. 6/94, dated 4-2-1994, the goods manufactured by the job worker which are not sold by the job worker are not liable to be taxed.

In the aforesaid back drop of the matter, it is contended by the petitioner that they are not liable to pay any duty and the show-cause notice, Annexure P-2 is unsustainable.

It is the case of the petitioner that they brought to the notice of the respondent-Commissioner vide letter dated 16-10-2001. The petitioner had also placed on record judgments of the Tribunal in various cases wherein similar questions have been decided and prayed for dropping the proceedings. Instead of dropping the proceedings, the respondent-Commissioner is proceeding with the matter, and

therefore, filed this petition inter alia on the ground that the show-cause notice is without jurisdiction, against the provision of law and is not sustainable. It is further averred that in view of the provisions of Section 11A of the Central Excise Act, 1944, the claim for duty for the period from May, 1997 to January, 2000 is beyond the period of limitation, and hence cannot be recovered.

In all, the contention of the petitioner is that the show-cause notice has been issued without jurisdiction and this Court is competent enough to quash the same.

Respondents have filed a return and an objection has been raised that as only show-cause notice has been issued, no case for grant of relief is made out. The petitioner should submit his reply to the show-cause notice and the competent authority while decide the issue. If the petitioner feels aggrieved by the same, he has further remedy of appeal as there is an appeal under the provisions of the statute.

I have heard the learned Counsel for the parties.

Shri J.P. Gupta, learned Senior Advocate appearing for the petitioner submitted that as the duty is not payable and as Rule 57-CC is not applicable, show-cause notice which is contrary to the provisions of law, beyond the jurisdiction and patently illegal could be quashed in a petition under Article 226 of the Constitution of India by this Court. He has placed heavy reliance on series of judgments. Some of which are Panama Chemical Works Vs. Union of India (UOI), , Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , Hindustan Electro Graphites Ltd. Vs. Union of India (UOI), , Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , Dharamsi Morarji Chemical Co. Ltd. Vs. Union of India (UOI) and Another, , The Ahmedabad Manufacturing and Calico Printing Co. Ltd. and Another Vs. Union of India (UOI) and Others, , etc., to contend that the writ jurisdiction can be exercised at the show-cause notice stage also in case from the records it is evident that the same will amount to multiplicity of the proceedings, when the same is patently erroneous and contrary to law or beyond jurisdiction.

A perusal of the aforesaid judgments relied upon by Shri J.P. Gupta, learned Senior Advocate lays down the aforesaid proposition. But the question remains whether in the facts and circumstances of the present case, can be it said that the show- cause notice, Annexure P-2 is of such a nature which could be described as patently illegal, erroneous, contrary to law or without jurisdiction.

A perusal of the show-cause notice indicates that it has been issued on the ground that the petitioner is engaged in the manufacturing of two categories of products; one is polyester chips cleared on payment of duty and the second is polyester chips manufactured on job work which is cleared without payment of central excise duty and on which exemption is being claimed on the ground that the goods are manufactured on job work and the major raw material are

supplied by the customer. The notice further indicates that by letter dated 22-1-1999, the Superintendent, Central Excise, Range-II, Malanpur had requested the petitioner to inform as to whether they are using inputs in respect of which Modvat Credit is availed in the manufacture of exempted final products. In the said notice, the petitioners were directed to submit the details of goods manufactured and cleared without payment of duty, using such common inputs. It is indicated in the show-cause notice that in response thereof vide letter dated 11-2-1999, the petitioners informed that their corporate office is examining matter with regard to use of common inputs in the manufacture of final products, i.e., polyester chips on job work basis and proportionately, Modvat Credit will be reversed, if required. Thereafter, vide letters dated 26-2-1999, 17-3-1999 and 6-8-1999, they intimated reversal of credit totally amounting to Rs. 5,05,685.00 being Modvat Credit involved on the inputs used in the manufacture of exempted category of final product. It is indicated in the notice that by the aforesaid letter, the petitioners have admitted that they have availed the Modvat Credit in respect of certain common inputs, details of which are mentioned in the show-cause notice. The notice further goes to indicate that Rule 57-C of the Central Excise Rules contemplates that where inputs have to be used exclusively in the manufacture of fully exempted products. In such cases, no credit of Modvat would be admissible. However, in cases where common inputs are used partly for manufacture of dutiable goods and partly for exempted goods, the manufacturer has an option under Rule 57-CC to adopt any of the two alternative methods; (a) Maintain separate inventory and account of the receipt/use of inputs, as between those used in the manufacture of dutiable final products and those used in the manufacture of exempt final products, and refrain from taking Modvat credit at the initial stage itself in respect of the part of inputs used in the manufacture of exempt final products; (b) Initially take Modvat credit on the inputs and they pay an amount equal to 8% of the sale price of the exempted final products which are cleared duty free, at the time of clearance.

It is alleged in the show-cause notice that the petitioner had taken Modvat credit on inputs which have been used in or in relation to manufacture of dutiable as well as exempted polyester chips and no separate inventories or account were maintained by the petitioner as required under the provisions of Rule 57-CC (9) nor they have paid 8% duty on the same. That apart, series of other matters have been alleged in the said notice. The notice also speaks about statement of one Shri Ravi Sachdeva recorded u/s 14 of the Central Excise Act, 1944 on 11-8-1999.

From the aforesaid, it is seen that the proceedings are in progress and it cannot be said that the dispute between the parties is such which could be adjudicated on admitted facts. Even though by filing a rejoinder and explaining their stand, the petitioners have tried to demonstrate before this Court that the contentions in the show-cause notice and reply are not correct and the proceedings have been initiated without any justification. But to decide the said issue this Court is required to examine the rival contentions and give a finding on the merits with

regard to tenability of the proposed action against the petitioners.

The respondents in their reply have contended that the matter has to be enquired into and it cannot be said that the show-cause notice is patently without jurisdiction. The question as to whether the Modvat credit has been taken on common inputs used in the manufacture of polyester chips as well as on the polyester chips cleared without payment of duty requires determination.

It is the case of the petitioner that the inputs used in this regard is of very negligible amount and used as a catalyst. Whatever that may be, a perusal of the pleadings of the parties goes to indicate that there are serious disputes between the parties on various factual aspect of the matter also.

After perusing the pleadings of the parties, the contents of the show-cause notice and the provisions of law, it cannot be said that this is a case which clearly falls in the category of error of law, excess of jurisdiction or patently erroneous as held in series of cases cited by Shri J.P. Gupta, learned Senior Advocate.

On the contrary, it has been the consistent view of the Courts that when a show-cause notice is issued and the statute itself provides for a remedy against such notices, the discretion of issuance of a writ of mandamus is not to be exercised in such matters.

Interference in a writ petition under Article 226 of the Constitution of India is permissible only if good grounds exist for exercise of the discretion. If on prima facie consideration, a case is made out in the show-cause notice, it is for the adjudicating authority to finally decide all questions including the question of fact and it would not be appropriate for a Writ Court to interfere at such a stage. The notice in question does make out prima facie case for adjudication and that being so, it cannot be said that the notice is wholly without jurisdiction or unsustainable in law. It is a well settled principle of law that when remedy exist in law for redressal of a grievance, it would be a sound exercise of jurisdiction to refuse to interfere in a petition under Article 226 of the Constitution of India. ,

The question of interference in such matters has been considered by this Court in the case of Kinetic Honda Motor Ltd. Vs. Union of India (UOI), , and after considering series of judgments on the subject in Paragraph 14, it has been observed as under:--

"Show-cause notices are not the end but beginning of the matter. Absence of jurisdiction or erroneous exercise of jurisdiction are not liable to be intermixed. It has not been suggested that the notice sought to be impugned is not under the relevant Act or provision or not by the proper authority. Therefore, it would not be proper to invoke the jurisdiction of this Court. The consistent view by this Court has been that against issuance of show-cause notice to a party, the jurisdiction conferred on this Court under Article 226 of the Constitution should not be invoked."

Similarly, another Bench of this Court in the case of Pushpavati Vs. Collector of

Customs and Central Excise, refused to interfere in a matter where show-cause notice was issued and it was held that the writ petition was premature and was not maintainable.

I have considered the facts and circumstances of the present case and as already indicated hereinabove, present is not a case where it can be said that the show-cause notice is wholly unsustainable, without jurisdiction or contrary to the statutory provisions. There are various allegations in the show-cause notice which requires enquiry and when forums are created under law, especially for the purpose of adjudication of such disputes and when the authorities are competent to deal with them, this Court in exercise of its writ jurisdiction should not permit the aggrieved party to ventilate its grievances in a petition under Article 226 of the Constitution of India.

It is a well settled proposition of law that the question of absence of jurisdiction and erroneous exercise of jurisdiction are intermixed as held by a learned Single Judge of this Court in the case of Kinetic Honda Motor Ltd. (supra) and in such cases, it would be appropriate that the authorities empowered under the statute are permitted to deal with the matter. Dealing with the matter on merits at this stage, by this Court and quashing the same does not seem to be appropriate in the facts and circumstances of the present case. Exercise of jurisdiction at the very threshold of the matter by this Court seems to be unwarranted as the petitioner can avail of the opportunity of satisfying the competent authority with regard to the grievance made by them in the present petition and in case the said authority acts in a manner which is contrary to the provisions of law, further remedy of appeal is provided under the statute.

In the light of the aforesaid, I am not inclined to intervene in the matter. The petitioner should show cause and the respondents after taking into consideration the objections of the petitioner, the legal provisions and the other material produced by them shall proceed to finally determine the same in accordance with law.

In view of the above, I find no merit in the claim made by the petitioner for interference at this stage. The petition is accordingly dismissed.