
(1990) 01 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 960 of 1986

Geep Industrial Syndicate Ltd.

APPELLANT

Vs

Assistant Collector of C. Ex.

RESPONDENT

Date of Decision : 19-01-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 11, 230
Central Excises and Salt Act, 1944 — Section 4
Constitution of India, 1950 — Article 226

Citation : (1990) 48 ELT 3

Hon'ble Judges : Om Prakash, J;A.N. Varma, J

Bench : Division Bench

Advocate : Sunil Gupta, for the Appellant; N.B. Singh, Senior Standing Counsel, for the Respondent

Judgement

A.N. Verma, J.—This petition is primarily directed against a show cause notice dated 6-10-1986 issued by the Assistant Collector, Central Excise, Allahabad, calling upon the petitioner to show cause why the refund claim submitted by them for the refund of Rs. 28,31,472.73 may not be rejected. As the parties have exchanged affidavits the petition is being disposed of finally at the stage of admission with the consent of counsel for the parties.

2. The facts relevant for the disposal of the petition lie within a narrow compass and there is not much dispute between the parties on those facts. They may be briefly summarised thus.

3. The petitioner, a public limited company, carries on the business of manufacturing and selling torches, dry cell batteries and miniature bulbs, etc. On the goods manufactured by it, it pays excise duty under the Central Excises and Salt Act, 1944. On March 28, 1977 it submitted a refund claim in respect of the duty stated to have been paid in excess on electric batteries during the period 12-7-1968 to 30-9-1975. The basis of the claim alleged was that under a mistake of law the petitioners had included post manufacturing costs in the

assessable value calculated u/s 4 (old) of the aforesaid Act. Legally post manufacturing costs, it was contended, were liable to be excluded in determining the assessable value of the concerned item. The Assistant Collector, Central Excise, New Delhi who by his order dated 3-4-1982 allowed the appeal and modified the order passed by the Assistant Collector with certain directions which, as we will presently demonstrate, have a vital bearing on the controversy raised before us are, therefore, being extracted here :

"In the circumstances, I consider that the proper course would be to allow the benefit in respect of the period of three years from the date of finalization of respective assessments. This benefit would, however, accrue only if the applicants were able to show to the satisfaction of the Collector that the post-manufacturing elements indicated by them were distinctly identifiable and could be shown to have been actually incurred.

Assistant Collector's order is modified accordingly.

Messrs. Geep Flashlight Industries Ltd., Sd/- S K Bhatnagar 28 South Rd Allahabad Appellate Collector"

4. The order passed by the Appellate Collector was not challenged by the Central Excise Department by way of appeal or revision or otherwise. The petitioner alleges that as a consequence of the order passed by the Appellate Collector it had become entitled to a refund of the sum of Rs. 28,31,472.73. Meanwhile, in late 1982 or early 1983 the Central Excise Department raised a demand of Rs. 37,02,058.25 as excise duty in respect of zinc calots cleared by it during the period 3-10-1981 to 30-9-1982. On 11-3-1983 the petitioner sent a letter to the Assistant Collector, Central Excise requesting him to adjust the sum of Rs. 28,31,472.73, the amount alleged to be refundable to the petitioner, against the aforesaid demand of the Central Excise Department and by the same letter the petitioner undertook to pay the balance immediately on receiving the intimation from the Asstt. Collector. The Asstt. Collector wrote back to the petitioner stating "deposit the balance of the amount forthwith pending examination, scrutiny, grant and sanction of your refund claim". The petitioner asserts that in pursuance of its undertaking it paid a sum of Rs. 8,70,585.52 on 21-3-1983 towards excise duty payable on zinc calots. Thereafter on 18-7-1984 the Asstt. Collector sent a letter to the petitioner asking it to deposit the aforesaid amount of Rs. 28,31,472.73 as excise duty within two days failing which the petitioner was threatened with an action under Rule 230 of the Central Excise Rules. In response to this letter the petitioner asked the Collector Central Excise to intervene in the matter and also requested that the aforesaid demand dated 18-7-1984 be withdrawn. Some correspondence was thereupon exchanged between the parties but the same is not material for our purpose except that it indicates that the Asstt. Collector was making an effort to examine the claim of the petitioner for refund and for that purpose he asked the petitioner to submit various documents.

5. Not much progress appears to have been made towards finalization of the claim of the petitioner from 1984 till 1986 except the exchange of correspondence between the parties until 6-10-1986 when the Assistant Collector, Central Excise issued the impugned show cause notice the operative part of which has been extracted above. Immediately thereafter the petitioner approached this Court by means of this petition under Article 226 of the Constitution and prayed for its quashing. This Court, while entertaining the petition, directed the learned Senior Standing Counsel for the Union of India to file counter affidavit without admitting the petition and ordered the stay of further proceedings consequent upon the impugned notice. Thereafter counter and rejoinder affidavits were filed by the parties.

6. For the petitioner, Sri S P Gupta submitted that the contents of the impugned notice unmistakably demonstrate that the Assistant Collector, Central Excise, does not consider himself bound by the directions given by the Appellate Collector in the order of remand because of the subsequent Supreme Court decision in the case of Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others, . Learned counsel submitted that this was wholly impermissible in law. The Assistant Collector was bound by the directions of the appellate authority which had become final, the appellate order not having been challenged by the Excise Department. Elaborating the submission, Sri Gupta submitted that even if the decision of the Appellate Collector ran counter to the opinion expressed by the Supreme Court the Assistant Collector had no option but to follow the directions of the appellate authority. The impugned notice, it was contended, was hence ex-facie without jurisdiction and should be quashed on that ground.

7. These submissions were countered by Sri N B Singh, learned Senior Standing Counsel, for the Excise authorities who vehemently contended that the impugned notice is a mere show cause notice and consequently it was open to the petitioner to urge before the Assistant Collector all such grounds on which the notice has been challenged in this petition. That being so, this Court ought not to exercise its discretionary powers under Article 226 of the Constitution. Alternatively, he submitted that the Supreme Court decision cited in the notice was relevant in any case for identifying the post-manufacturing elements and as the process of identifying such elements had yet to be concluded it was not only competent to the Assistant Collector to refer to that decision but also fair to invite the comments of the petitioner thereon as the decision had an important bearing on the issues for which the case had been remanded to the Assistant Collector.

8. Having given a careful thought to these contentions it seems to us that while there is no valid ground for quashing the notification, some comments shall have to be made as to the extent of the powers and the degree of freedom which the Assistant Collector possesses when dealing with the issues remanded to him so that the Assistant Collector does not exceed his jurisdiction in determining the

dispute. Why is this necessary shall be indicated by us in the later part of this judgment.

9. First, the issue whether the impugned notice should be quashed. We think that the learned Senior Standing Counsel was right in stressing that the impugned notice being a mere show cause notice having been issued by an authority which was rightfully seized of the matter upon remand of the case, no ground exists for quashing the same. As mentioned above, it will be open to the petitioner to take all such pleas in opposition to the show cause notice as may be permissible in law including the plea that the Assistant Collector was bound to follow the directions of the appellate authority even if in the opinion of the Assistant Collector the decision of the appellate authority may not be in consonance with the later decision of the Supreme Court in *Bombay Tyre International Ltd.* (supra). The opinion expressed by the Assistant Collector in the impugned notice that in view of the Supreme Court decision the petitioner's claim for refund was inadmissible in law, was obviously tentative and provisional. For otherwise there would be no sense in asking the petitioner to show cause against it. While showing cause against the notice it would be open to the petitioner to rely on all such material and precedents as may be relevant for identifying the post-manufacturing elements and for demonstrating that in point of fact such post-manufacturing expenses were actually incurred.

10. The same conclusion is reached by another process of reasoning. According to the directions of the Appellate Collector the post-manufacturing elements were still to be identified by the Assistant Collector. Identification of post-manufacturing elements clearly implies ascertaining the true character and nature of the items of expenses which the petitioner contends are liable to be deducted from the wholesale cash price. Whether such items can properly be characterized as post-manufacturing elements as distinct from the elements which may have contributed to the value of the goods upto the date of sale, has still to be ascertained. If, therefore, the decision of the Supreme Court in *Bombay Tyre International Ltd.* (supra) was relevant for such identification, we see absolutely no lack of authority in the Assistant Collector to call upon the petitioner to show cause why in view of that decision the claim of the petitioner for refund founded on such items of expenses should not be rejected. We should not, however, be taken to have expressed any concluded opinion whether the Supreme Court decision cited in the notice does have that relevancy as that is a matter which has yet to be explored in the proceedings commenced upon the impugned notice.

11. To the aforesaid extent, the learned Standing Counsel was right in his contention that there is no occasion yet for quashing the impugned notice. We, therefore, refrain from quashing the impugned notice.

12. We, however, cannot allow the matter to rest there as an important question debated at the Bar was whether the Assistant Collector was free to ignore the decision of the Appellate Authority which remanded the case to the former on the

supposition that a Supreme Court decision has taken a view which is contrary to the opinion expressed by the Appellate Collector. Sri Gupta submitted that the contents of the notice unmistakably convey the impression that the Assistant Collector has decided to disregard the decision of the Appellate Collector in view of the decision of the Supreme Court. There is no doubt that there are some observations in the notice which do lend support to the contention of Sri Gupta. Thus the Assistant Collector has stated that the refund claim of the petitioner was inadmissible in view of the judgment of the Supreme Court in the case of Messrs. Bombay Tyre International Ltd., "on account of the non-admissibility of P M E for the purposes of central excise duty. These observations are undoubtedly at complete variance with the decision of the Appellate Collector who has observed:

"I find that the appellants are correct inasmuch as the excess payment made as a result of inclusion of post-manufacturing charges is refundable under common law and Rule 11 has no application in the matter."

13. These observations make it necessary to lay down the extent of jurisdiction which is vested in the Asstt. Collector. The Assistant Collector was required to comply with the directions of the Appellate Collector. As an authority subordinate to the Appellate Collector, it was not competent to the Assistant Collector to take a different view and hold that in view of the decision of the Supreme Court the refund claim of the petitioner on account of the post-manufacturing elements was not admissible in law. So long as the order of the Appellate Collector was not set aside by any court or superior authority the Assistant Collector had no option but to scrupulously follow the directions issued by the Appellate Collector, even if the view expressed by the Appellate Collector was contrary to the law declared by the Supreme Court in the case of Bombay Tyre International Ltd. (supra). Wherever there is hierarchy of courts or authorities, each court or authority is bound by the decision and directions of the higher authority or court. If the subordinate authority is left free to disregard and disobey the findings and directions of a higher authority or tribunal there will be complete indiscipline and the system on which such hierarchy of courts or authority is founded, would not be able to function effectively. The law on the subject is far too firmly established by numerous decisions both of this Court as well as of the Supreme Court to require further elaboration on this point. (See The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, ; the decision dated May 19, 1988 in Writ No 4424 of 1987 connected with Writ Petitions No. 216 of 1988 and No. 8215 of 1987 - UP Forest Corporation, Lucknow v. Income Tax Appellate Tribunal, Lucknow and Ors.). In the latter of these two cases, a Bench of this Court examined this question in depth relying on several Supreme Court decisions and decisions of other High Courts stressing that every authority or court is bound by the decision of a higher authority or court.

14. That being the legal position the Assistant Collector shall not reopen the issue about the admissibility of the petitioner's claim of refund which has already

become foreclosed as a result of the decision of the Appellate Collector. All that the Collector has now to decide is (i) to ascertain whether the post-manufacturing expenses claimed by the petitioner as refundable are distinctly identifiable, i.e., whether the items of expenses claimed by the petitioner bear the character of post-manufacturing element so as to justify the deduction of such amounts from the assessable value for the purpose of determining excise duty and (ii) whether these expenses were actually incurred by the petitioner. When calculating the amount of refund the Assistant Collector shall also have regard to the direction of the Appellate Collector as regards the period of limitation. The Appellate Collector has held that the benefit shall be allowed to the petitioner only in respect of the period of three years from the date as mentioned in the order of the Collector.

15. In conclusion, we are constrained to observe that though the order of remand was passed by the Appellate Collector as far back as 3-4-1982, the Asstt. Collector has yet not been able to comply with that direction. The delay has been sought to be explained in the counter affidavit by putting the blame on the petitioners. On a perusal of the affidavits exchanged between the parties, however, we do get an impression/rona facie that matters are being delayed at the end of the Asstt. Collector rather than the petitioners who are naturally interested in expediting the matter. Interested as they are in the refund, it is hardly likely that the petitioners would cause hindrance in the finalization of the proceedings.

16. In the premise, the petition succeeds and is allowed in part. The Assistant Collector, Central Excise, I D O Allahabad is ordered to comply with the directions issued by the Appellate Collector in his order dated 3-4-1982 in accordance with law keeping in view the observations made hereinabove within a period of four months from the date on which a certified copy of this order is submitted before him by the petitioner. The Assistant Collector shall indicate to the petitioner within one month from today what further documents or material the petitioners are required to furnish. Thereafter the petitioners shall furnish those documents or material within one month of the receipt of such intimation. The parties shall, however, bear their own costs.

17. A copy of this judgment may be given to the learned counsel on payment of the requisite charges within a week.