(1987) 08 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 3879 of 1987

Genest Engineers Pvt. Limited — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 05-08-1987

Acts Referred:

Central Excise Rules, 1944 — Rule 233
Central Excises and Salt Act, 1944 — Section 35, 35E, 37B

Citation : (1991) 33 ECR 401 : (1989) 43 ELT 24

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

Bench : Division Bench

Advocate : Kamla B. Trivedi, Gupta and Dave, for the Appellant; None, for the Respondent

Judgement

Gokulakrishnan, C.J.—The petitioners have come forward with the present writ petition for issue of a writ of mandamus or any other appropriate writ, order or direction holding and declaring that Section 37-B of the Central Excises and Salt Act, 1944 is ultra vires the Act and the Constitution of India. There is a further prayer to quash the impugned show cause notice, which is Annexure ''K'' to this Special Civil Application. The other prayers are consequential prayers with regard to the above said main objections raised by the petitioners herein.

2. Sections 37-B of the Central Excises and Salt Act, 1944 reads as follows :

"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 requires 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 clear from Section 37-B that the Administrative orders, instructions and directions have to be observed by the excise authorities who are bound by such orders. Nevertheless, the section has taken particular care to see that the authorities who will be acting as quasi-judicial authorities are protected from such type of directions or instructions. That is way the proviso mentioned above clearly makes it that the instructions, orders or directions cannot bind any Central Excise Officer by directing him to make a particular assessment or to dispose of a particular case in a particular manner. Mr. Trivedi, the learned Counsel appearing for the petitioners, in order to substantiate his contentions as regard the prayer to declare Section 37-B as ultra vires the Constitution, brought to our notice the judgment in the case of Orient Paper Mills Ltd. v. Union of India reported in 1978 E.L.T. (J 345). In that judgment, paragraph 8 reads as follows :

"8. If the power exercised by the Collector was a quasi-judicial power as we hold it to be, that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding dispute between the persons who are called upon to pay duty. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide dispute arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their judgments; they would essentially be the judgments of the authority that give the directions and which authority had given those judgments without hearing the aggrieved party. The only provisions under which the Board can issue directions is Rule 233 of the Rules farmed under the Act. That rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of these Rules. Under this rule the only instruction that the Board can issue is that relating to administrative matters; otherwise that rule will have to be considered as ultra vires of Section 35 of the Act."

It has been made very clearly that there is no provision in the Act empowering the Board to issue to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty. The judgment further observes that it is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising out of the Act, they must act independently and impartially. Considering the principle enunciated in this judgment and also Section 37-B, which we have extracted above, we are of the definite view that this sections does not offend any of the provisions of the Constitutions and there is absolutely no direction to any quasi-judicial authority to behave in a particular manner as directed by the Board. The general instructions given by the Board will bind such officers, only when they act in the administrative capacity. We are definite that this Section does not offend any of the provisions of the Constitution and as such, it is intra vires the Constitution.

3. The purpose for which the petitioners have approached this Court is that the excise authorities has issued the show cause notice, which is Annexure ''K'' to the Special Civil Application.

4. The short facts of this case for the purpose of appreciating the contention of the petitioners herein are that the petitioners availed the benefit of the Notification dated 1-3-1986 and opted to come under the Modvat Scheme. On 2-4-1986, the Government issued another Notification No. 216/86 wherein the Government has increased the limit of exemption for those who have not opted for Modvat Scheme. Since the petitioners thought that this exemption granted by the above said notification will benefit his trade, opted out of Modvat Scheme and wanted to avail the exemption benefit granted by Notification No. 216/86. No doubt, the authorities concerned have approved the classification list and also RT-12 return filed by the petitioners for the purpose of coming under the general scheme of exemption. It is the say of Mr. Trivedi, the learned Counsel appearing for the petitioners, that the authorities who have accepted the classification list and RT-12 returns should not reopen the matter by issuing the show cause notice which is in question now and, on the other hand, they should have followed the procedure u/s 35-E of the Central Excises and Salt Act, 1944. It is the next contention of Mr. Trivedi that there is absolutely no bar, either in the Rules or in the Act, prohibiting any person from opting out of Modvat Scheme and availing the benefit of the general exemption scheme granted by the notification referred above. Both these submissions can as well be pressed before the quasi-judicial authority when the matter is taken up for hearing after the explanation is given by the petitioners for the show cause notice issued, which is Annexure ''K'' to the Special Civil Application. We are not expressing any view as to how far the clarification issued by the Board, which is Annexure ''J'' to the main Special Civil Application will be binding upon the parties concerned. That is a matter which has to be decided by the properly constituted quasi-judicial authority and any instruction or clarification such as Annexure ''J'' will not bind the quasi-judicial authority in deciding the above said contentions raised by the petitioners herein. The quasi-judicial authority without being obsessed by such clarification or trade notices, if any, in pursuance of such clarification will decide the issue as and when it comes up before them. As on date, the petitioners have to give explanation for the show cause notice issued by the Department. We are of the view that it is premature for the show cause notice issued by the Department.

We are of the view that it is premature for the petitioners to approach this Court at this point of show cause stage. For all these reasons we have stated above, we do not find any merits in any of the contentions raised by the learned Counsel appearing for the petitioners herein and accordingly, the Special Civil Application is dismissed.