(1983) 06 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No. 1264 of 1981-A

Heveacrumb Rubber (P) Ltd. APPELLANT

Vs

Superintendent of Central Excise RESPONDENT

Date of Decision : 30-06-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) 3 ECC 197 : (1983) ECR 1121D : (1983) 14 ELT 1685

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : M. Pathrose Mathai and Joseph Vellappally, for the Appellant; P.V. Nambiar, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner is a private limited company. It carries on the business of purchasing natural rubber in scrap form and by cleaning it sells the same to the manufacturers of rubber goods in standard 26 kg. blocks. They are called crump or block rubber. By Ext. PI the Inspector of Central Excise, Palai, the 2nd respondent, requested the petitioner to furnish certain particulars. Thereafter by Ext. P2 dated 7-2-1981 the 1st respondent informed the petitioner that block or crump rubber, produced in the petitioner''s factory, is liable to central excise duty under Tariff item No. 68 of Central Excise Tariff and asked the petitioner to send certain details and particulars. The petitioner was also asked to explain why action should not be taken for not obtaining Central Excise Licence and clearing the goods without payment of duty. The petitioner sent a detailed objection dated 13-3-1981 to the 1st respondent. According to the petitioner they are not carrying on any manufacturing process and what they do is to purchase natural rubber and sell it after a minimum process of cleaning and drying. There is no manufacture of any goods in the factory so as to attract excise duty. In particular, the petitioner brought to the notice of the 1st respondent the decision of the Appellate Collector of Central Excise, Madras in Appeal No. 2320 of 1980 wherein the Appellate Collector had held that in such circumstances there is no manufacture. Notwithstanding Ext. P3 objections, the

1st respondent again requested the petitioner by Ext. P4 communication to furnish certain particulars. The petitioner replied thereto by Ext. P5 communication reiterating what was said by them in Ext. P3. It seems, when petitioner and others similarly situate were served with such notices on an earlier occasion, the various factory owners filed Original Petitions in this court which were disposed of on 13th of November 1978. They are O.P. No. 1770 of 1975 and connected O.Ps. It was specifically directed by this court that the petitioners will be given a full and fair opportunity to put forward all their contentions before the concerned Assistant Collector of Customs, who will examine all the contentions by passing speaking orders. The petitioner has in this O.P. impugned the action of the respondents and has prayed for a declaration that crump rubber obtained in the petitioner''s factory does not fall under item 68 of the 1st Schedule to the Central Excises and Salt Act, 1944 and also for the issue of a writ of mandamus to respondents to consider and dispose of Exts. P3 and P5 representations, after affording the petitioner a proper hearing and an opportunity to adduce evidence.

2. It is stated in the counter-affidavit filed on behalf of the respondents dated 29th of March, 1983 that the products of the petitioner''s factory are liable to Central Excise duty under Tariff item 68 of the Central Excise Tariff. It is also stated in paragraph 3 of the counter-affidavit that there is no adverse order passed by the respondents against the petitioner. In paragraph 7 it is mentioned that Exts. P3 and P5 are still pending consideration before the 1st respondent and without waiting for an order in that behalf the petitioner was not justified in filing this O.P.

3. It is interesting to note, that in the counter-affidavit filed by the respondents in paragraph 2, it is asserted that the products of the petitioner''s factory are liable for Central Excise duty under Tariff item 68. But in paragraph 3, it is stated that there is no adverse order passed by the respondents against the petitioner and in paragraph 7 it is repeated that Exts. P3 and P5 are still pending for consideration. This has to be taken along with the assertion made in Ext. P2 by the 1st respondent wherein it is stated in paragraph 2 that block or crump rubber produced in the petitioner''s factory is liable for Central Excise duty under Tariff item 68 of the Central Excise Tariff. The petitioner has filed detailed objections, evidenced by Exts. P3 and P5. In Ext. P3 the petitioner has also relied upon the decision of the Appellate Collector who has gone through the matter very exhaustively. It is also worthy to note that a Division Bench of this Court in O.P. No. 1770 of 1975 and connected cases directed that there will be a full-fledged enquiry in the matter after giving the petitioners a full and fair opportunity to substantiate their contentions. Notwithstanding all these, it is surprising that the respondents even without a proper investigation and adjudication as to whether the block or crump rubber produced in the petitioner''s factory is liable for Central Excise duty under Tariff item No. 68 of the Central Excise Tariff have been repeatedly asking the petitioner to furnish certain details in connection therewith. If the particular item produced in the petitioner''s factory is not liable for excise

duty as contended by the petitioner, there is no reason why the respondent should insist the petitioner for furnishing the details. If, on the other hand, the respondents hold the view that notwithstanding the objections raised in Exts. P3 and P5, as also the decision of the Appellate Collector referred to in Ext. P3, the petitioner is liable for excise duty, the petitioner should be told so definitely with reasons therefor. A speaking order is a pre-requisite before saddling the petitioner with the liability to pay Excise Duty. The respondents have merely asserted that the block or crump rubber produced in the petitioner''s factory is liable for excise duty under Tariff Item No. 68 of the Central Excise Tariff. This is not sufficient. It is for the Revenue to allege and substantiate, at least prima facie, as to why '' a particular item is taxable under a particular Tariff entry. The initial burden is on the Revenue to substantiate the assertion. I have come across a few cases wherein only assertions are made that a particular item will fall under a particular entry in the Tariff, without referring to any material or basis on which it is so surmised. The assessee is entitled to know and should be informed, the basis on which the Revenue proceeds to assess it, so that the opportunity given to the assessee will be real and effective and not illusory and a make believe. Without such a real opportunity being afforded, if on mere assertions, further documents and papers are obtained and assessments are made and liability saddled on the assessee making it a "fait accompli", it will be hard, unjust and improper. Steps so taken will be violative of the principles of natural justice. The assessing authority will be acting arbitrarily and not fairly. That the statutory authorities invested with power, which when exercised will effect persons with civil consequences, should act fairly, reasonably and in just manner, has been laid down repeatedly by courts. But it is regretable that such principles are given a go bye in many cases and parties are driven to resort to this court under Article 226 of the Constitution. Notwithstanding the very detailed objections the respondents have not cared to dispose of Exts. P3 and P5, but continued to insist that the petitioner should furnish certain details asked for. The procedure adopted is unwarranted.

4. Counsel for the petitioner submitted that the question as to whether the block or crump rubber produced in the petitioner''s factory will come under item 68 of the Central Excise Tariff is a jurisdictional fact. Only if there is some manufacture or production of goods which are liable to excise duty, the petitioner need file the details asked for and the respondents will have jurisdiction to make any levy on the petitioner. In one sense the contention of the petitioner''s counsel that the basic fact as to whether the particular commodity is liable to excise duty at all will be a jurisdictional fact if the word ''jurisdiction'' is understood in the larger sense of the term. In view of-the averments contained in the counter-affidavit that Ext. P3 and P5 representations are pending and that no adverse order has been passed against the petitioner by the respondents and also in view of the recent decision of the Supreme Court in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , Iam not inclined to exercise the discretionary jurisdiction of this court under Article 226 of the Constitution at this stage.

Taking all facts and circumstances into account, I think the interests of justice will be met if the respondents are directed to consider and dispose of Exts. P3 and P5 and pass a proper speaking order giving a specific finding as to why it is said that block or crump rubber produced in the petitioner''s company is liable for excise duty under Tariff No. 68 of the Central Excise Tariff. Before passing an order, the petitioner will be afforded a real and effective opportunity of being heard, with all materials. Only after communication of an order entering definite findings on the various objections raised by the petitioner, the respondents will proceed ahead in the matter.

5. The O.P. is disposed of subject to the above observations and directions. There will be no order as to costs.

A copy of this judgment may be sent to the Collector of Central Excise, Cochin, for appropriate action.

