(1996) 12 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2461 of 1996

I.C.I. India Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37B, 4
Constitution of India, 1950 — Article 226, 227

Citation : (1997) 95 ELT 17

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

Bench : Single Bench

Advocate : None, for the Appellant; Indira Nair, for the Respondent

Judgement

S.K. Dubey, J.—By this petition under Articles 226 and 227 of the Constitution of India the petitioner has prayed for quashment of show cause notice dated 6-4-1996 Annexure P-10 and also memo directing seizure Annexure P-11, dated 2-5-1996 and also legality and propriety of the Circular No. 194/28/96-CX., dated 29-3-1996 Annexure P-12 issued by the Central Board of Excise and Customs.

2. The petitioner is a public limited company which manufactures the explosives. The manufactured goods are excisable goods under Chapter 36 of the Central Excise Tariff Act, 1985. Section 4 of the Central Excises and Salt Act, 1944 deals with determination of value of the commodity for the proposes of charging of duty of excise. The petitioner for the purposes of sale of explosives prepares invoices of the price which is to be charged from the customers in which the interest component forms part of the total sale price. One of such invoice is annexed with the petition as Annexure P-1. Therefore, the petitioner contended before the Superintendent, Central Excise that in the light of the decision of the Supreme Court in case of Assistant Collector of Central Excise and Others Vs. Madras Rubber Factory Ltd., and in case of Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, that the interest is receivable, therefore,

the excise duty is not payable on the goods so sold. Circular issued by the Central Board of Excise and Customs Annexure P-12 runs counter to the decisions of the Supreme Court and the department is bound by the instructions in view of Section 37B of the Central Excises and Salt Act, 1944. It is contended that the Central Board of Excise and Customs cannot issue any instructions which are contrary to the statutory provision or law declared by the Supreme Court. The petitioner made representation [to] the Superintendent of Central Excise is not making any enquiry in the matter whether the interest is receivable and is excludible from the excise duty. On the other hand show cause notice has been issued to impose penalty and to seize the manufactured commodities.

3. Smt. Indira Nair, learned Counsel for the respondents submitted that the decision of the Supreme Court rendered in the year 1987 has been reviewed and recalled in the later decision reported in Government of India and Others Vs. Madras Rubber Factory Ltd. and Others, as observed in para 22. Counsel referred to para 56 which deals with interest on receivables. Counsel submitted that a glance of Annexure P-1 shows that in column of Terms of Payment is stipulated within 21 days on receipt of materials. Therefore, the interest which was receivable by the manufacturer would be payable after the expiry of 21 days and not prior to that. The department at several times asked the petitioner to place the material to demonstrate that on the goods so sold the sale price was received after 21 days. But in spite of that the petitioner is making representations and not producing any material to demonstrate that the price stipulated in the invoices of the goods so sold was received after 21 days. Even now in response to show cause notice if the petitioner produces the material to demonstrate that the price stipulated in the invoices of the goods so sold was received beyond the stipulated period, certainly the department will exclude the interest from the excisable duty.

4. On the statement so made by the Counsel for the respondents and the fact that a manufacturer or an assessee is to place material to demonstrate that though the price is receivable but the price stipulated in the invoice was received late beyond the stipulated period then certainly the assessing authority will pass order keeping in consideration the effect of the same in the light of the decision of the Supreme Court rendered in Government of India v. Madras Rubber Factory Limited (supra). Therefore, at this stage it is not necessary for this Court to express any opinion on Annexure P-12 whether it runs counter to the decision of the Supreme Court.

5. In the circumstances, this petition is disposed of with a direction to petitioner to appear before the Superintendent, Central Excise, the assessing authority to place the material that the interest on the commodity so sold on which the excise duty has been demanded was received on non-payment of the price after stipulated period. On such enquiry the assessing authority shall pass appropriate orders in accordance with law in the light of law laid down by the Supreme Court. The petitioner shall appear before the assessing authority on 13th January 1997

and, if so advised may file fresh representation. The assessing authority shall proceed to decide the representation of the petitioner after giving opportunity of hearing to the petitioner.

6. Accordingly, the petition shall stand disposed of. No costs.

