
(1998) 09 MAD CK 0131

In the Madras High Court

Case No : Writ Petition No's. 14380 and 20767 of 1989

India Pistons Limited

APPELLANT

Vs

Asstt. Collector of C. Ex.

RESPONDENT

Date of Decision : 03-09-1998

Acts Referred:

Central Excise Rules, 1944 — Rule 57G

Citation : (2000) 117 ELT 545

Hon'ble Judges : Shivraj Patil, J

Bench : Single Bench

Advocate : Krishna Srinivasan, for S. Ramasubramanian and Associates, for the Appellant; V.P. Senkottuvel, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Shivraj Patil, J.—Heard learned Counsel for the parties.

2. The petitioner in this writ petition has sought for a certiorarified Mandamus by calling for the records of the 1st respondent in C.No. IV/16/106/89, dated 3-7-1989 and quash the same.

3. The facts which are considered relevant and necessary for the disposal of the writ petition, in brief, are the following : - The petitioner is a Company incorporated under the Companies Act, having its registered office at Madras. It is engaged in manufacturing of certain items which includes Cylinder Liners and Ring Castings. Ring Castings are manufactured out of Pig Iron as one of the raw materials. The goods manufactured in the petitioner's factory are subject to levy of Excise Duty under the Central Excises and Salt Act. The Government of India introduced a scheme called "Modvat". The said scheme was introduced with an intention to avoid the cascading effect of levies of Central Excise Duty on manufactured goods.

4. The petitioner-Company, by its letter dated 8-5-1996, addressed to the

Assistant Collector of Central Excise, Madras-II Division, the respondent No. 1 herein, sought for permission to opt for "Modvat" in respect of piston, pin and rings manufactured by them. In response to the said letter, on behalf of respondent No. 1, a reply was sent by letter C.No. IV/16/86/86, dated 5-9-1986. In the penultimate paragraph of the said letter, it is stated thus :-

"With regard to your queries in your letter ref. A/VB/EX/MRK-10, dated 8-5-1986 you are informed that the Assistant Collector has permitted you to take credit at the end of the month to the extent of the materials used in the manufacture of Rings. Necessary cross-references should also be given against the entries in the RG 23A Part I and in the relevant Gate Passes under which inputs/raw materials received/despached by you."

Thereafter, a show cause notice bearing O.C. No. 749/89, dated 4-5-1989 was issued to the petitioner requesting to show cause as to why the permission granted to the petitioner, vide letter of the respondent No. 1, dated 5-9-1986 should not be cancelled. The petitioner gave a detailed reply dated 16-5-1989 and also made written submissions before respondent No. 1. Respondent No. 1, obviously not being satisfied with the reply and written submissions of the petitioner, passed the impugned order C.No. IV/16/106/89, dated 3-7-1989, cancelling the permission dated 5-9-1986, granted to the petitioner, stating that the petitioner had not entered the input, that is, the Pig Iron in RG 23A Part I register as required under Rule 57G of the Central Excise Rules, 1944 at the time of receipt of the inputs. The petitioner, aggrieved by the said order dated 3-7-1989, has approached this Court by filing the writ petition for the relief as stated above.

5. A counter-affidavit is filed on behalf of the respondents, justifying the impugned order and resisting the claim made in the writ petition, emphasizing that the petitioner-Company did not make entry of the input in RG-23A Part I register and as such the permission granted earlier was cancelled.

6. Learned Counsel for the petitioner urged (1) Respondent No. 1, having granted permission by his order dated 5-9-1986 after considering all aspects, was not justified in passing the impugned order; further, respondent No. 1 having passed the order dated 5-9-1986 was quasi-judicial authority, could not review his own order, as is done under the impugned order; in the absence of power of review conferred on the authority by the statute, the impugned order passed by respondent No. 1 is patently illegal and one passed without jurisdiction. In support of these submissions, he has relied on the following decisions : - (1) Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, , (2) Madras Rubber Factory Ltd. Vs. Assistant Collector of Central Excise, Madras and Another, and (3) Indian Organic Chemicals Ltd. Vs. Union of India and Others, . (2) The very object of introducing "Modvat" was to take away the cascading effect of levies of Central Excise Duty, merely because there was no specific provision available for granting such permission, respondent No. 1 could not have taken the view that the permission

granted was contrary to law; respondent No. 1 ought to have looked into the said claim as a whole.

7. On the other hand, the Additional Central Government Standing Counsel, representing the respondents made submissions supporting the impugned order, reiterating the submissions made in the counter-affidavit.

8. I have considered the submissions made by learned Counsel for the parties. As to the power of review of respondent No. 1, in passing the impugned order, the respondents have not stated anything in the counter-affidavit. Learned Additional Central Government Standing Counsel was also not in a position to show any provision under the Act which conferred power on respondent No. 1 to review his own earlier order. He also submitted that the petitioner had an alternative remedy of filing an appeal to challenge the impugned order and without exhausting the alternative remedy available, the petitioner has rushed to this Court and as such the writ petition may be dismissed. Learned Counsel for the petitioner, reacting to this submission, promptly stated that when the impugned order is one passed without jurisdiction on the face of it and when the writ petition is pending for the last nine years in this Court, this Court, may not at this stage, drive the petitioner to avail the alternative remedy.

9. It is well settled in law that the power of review, unless conferred by the statute expressly, it cannot be assumed or exercised by the authorities. In this case, in the absence of any specific provision shown to me that respondent No. 1 had the power of reviewing his own order, the impugned order cannot be sustained, inasmuch as the impugned order is one passed without jurisdiction, in the absence of any power given to respondent No. 1 by the statute. This apart, the decisions aforementioned, cited by learned Counsel for the petitioner are the authorities on the point, which support the contention of the petitioner. Since it is the settled position of law, it may not be necessary for me to state in details referring to the said decisions. Since I have taken the view that the impugned order is one passed without jurisdiction and patently illegal, it may not be necessary to drive the petitioner to avail the alternative remedy of filing appeal.

10. Further, mere existence of alternative remedy is no bar under law. It is only a rule of prudence and practice and not rule of law. It is not necessary that in every case wherever there is an alternative remedy available, the parties must be driven to avail it. In this case, the impugned order is one passed without jurisdiction and when the writ petition is pending for the last nine years in this Court, the submissions of learned Counsel for the respondents that the petitioner has got an alternative remedy, does not appeal to me. Hence, I reject the said contention. I do not think it necessary to express one way or the other on the respective contentions raised by the parties in the writ petition and in the counter-affidavit. It is open to the parties, to urge on merits before appropriate authorities or forum.

11. In the result, for the reasons stated above, the petitioner is entitled to

succeed. Hence, I pass the following order :-

The writ petition is allowed and the impugned order in C. No. IV/16/106/89, dated 3-7-1989 is quashed. No costs. Consequently W.M.P. No. 20767 of 1989 is dismissed.