

(2000) 03 MAD CK 0092
In the Madras High Court
Case No : Writ Appeal No. 118 of 1997

India Pistons Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 35A, 35EE, 35EE(1), 35EE(2)
Constitution of India, 1950 — Article 226

Citation : (2000) 121 ELT 589

Hon'ble Judges : R. Jayasimha Babu, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : Krishna Srinivas, for S. Ramasubramaniam and Associates, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—This writ appeal is directed against the order of the learned single Judge by which the writ petition filed by the petitioner, a manufacturer of motor vehicle parts and accessories, against a show cause notice issued by the Central Government u/s 35EE(4) of the Central Excise and Salt Act, 1944 was dismissed.

2. It was urged by the learned counsel for the appellant that unlike the other statutes such as Income Tax Act, Sales Tax Act and numerous other Acts, which give suo moto revisional powers to the Revisional authorities specified in these enactments, subject to such powers being exercised with a specified period. Section 35EE(4) of the Central Excise and Salt Act has not prescribed any time limit. Counsel submitted that notwithstanding the absence of the specification of time limit, the Court must view that provision as procedural provision, and the time limit prescribed elsewhere in the Act should be read into that provision in order to make the power reasonable and to give finality to the orders made in appeal u/s 35A, after the lapse of a reasonable time. Counsel in this context referred to Section 11-A which prescribes the time limit of six months as the

normal period of limitation for recovery of duties not levied, or not paid or short levied or short paid or erroneously refunded, the longer period of five years provided therein, being available only to cases to which the proviso to that Section is attracted.

3. Learned Counsel for the appellant referred us to the order which the Central Government itself had made in the year 1986 in a Revision petition filed by the assessee against an order of 10-6-1981 of the Tribunal in respect of the goods manufactured by it in the year 1977. Our attention was invited to the fact that in that order the Central Government had taken into account the excesses as also the shortages in the production of the items manufactured by the assessee.

4. Counsel further submitted that the Central Governments had acting grossly unreasonably, issued a show cause notice in the year 1987 in respect of an order in appeal made in December, 1984. Counsel submitted that the excise authority had, after the amendment to Section 35EE on 11-8-1985 appealed to the wrong forum even though when the appeal was filed, the jurisdiction had been vested in the Central Government, by Section 35EE(1) having vested the power of revision at the instance of the aggrieved party with the Central Government Counsel submitted that though the assessee's objections to the Tribunal's jurisdiction had been upheld, the Tribunal had erred in going further and directing the transmission of the papers to the Central Government on the ground that the Government being vested with the power to hear revision should be entitled to do so. Counsel pointed out that this direction of the Tribunal, was, at the instance of the assessee, quashed by this Court in November, 1986 and the Central Government itself was a party to that writ petition. It was only after the disposal of the writ petition by this court, that the Central Government had invoked the suo motu revisional power u/s 35EE(4) of the Act.

5. Counsel submitted that the events which preceded the issuance of the show cause notice, would in the special circumstances of this case, warrant the quashing of the show cause notice, even though ordinarily this court would decline to do so in a petition filed under Article. 226 of the Constitution.

6. Though these submissions were made persuasively ,we regret our inability to agree with the same.

7. The time limits specified in other Enactments for the exercise of suo moto revisional power cannot be imported into in this enactment, unless such time limits has been incorporated by reference in this Statute. There has been no such incorporation by reference to any other statute in Section 35EE(4) of the Central Excise and Salt Act.

8. The fact that the Central Government had accepted that the shortages can be set off against the excess for an earlier year, does not imply that even when, on examination of facts of the case for subsequent years, a different view is warranted, the Central Government should be held to be powerless to adjudicate upon the facts and circumstances of subsequent years. It is always open to the

assessee to bring to the notice of the Revisional Authority the earlier orders passed by it and to point out as to how the facts and circumstances in the subsequent years are similar to those that prevailed in the earlier year in which the Central Government had decided in favour of the assessee.

9. The fact that the Central Government was a party to the writ petition which the petitioner had filed against the order of the Tribunal, does not imply that the Government before awaiting the final decision in the Writ petition should have resorted to its power u/s 35EE(4) of the Act. Till the disposal of the writ petition none of the parties to the petition could have been certain as to what the final outcome would be.

10. The order of the Collector (Appeals) can be said to have come to the notice of the Central Government only when the Tribunal directed the transmission of all the records to the Government. The fact that the Government had not resorted to its power u/s 35EE(4) immediately on receipt of the records cannot be put against the Government, as in terms of the order of the Tribunal, the records transmitted were required to be treated as revision preferred by the excise authority, u/s 35EE(2). Had that proceeding continued, there would have been no need at all to resort to a proceeding under Sub-section (4). The show cause notice that has been issued to the petitioner was issued shortly after the writ petition was disposed off.

11. The submission that Section 11-A of the Act should be read into Section 35EE(4) is not a submission to which we can accede .. Section 11A in fact has been referred to in Section 35EE(6) for the limited purpose of that Sub-Section. It is only where that Sub-section (6) is clearly attracted, that the time limit specified in Section 11A must be complied with. It is not the case of the appellant that Section 35EE(6) is attracted here. We cannot at the present time assume that the order ultimately to be made by the Central Government in exercise of its suo moto revisional power will violate Sub-section (6). It is open to the assessee to assert all its rights in the reply to the show cause notice and challenge the final order if the same could be shown to be vitiated in law.

12. In this case, the proceeding against the appellant commenced with the demand for payment of duty. That demand was not barred by limitation. At the instance of the appellant the appellate authority directed the original authority to recompute in the manner set out in the order of the appellate authority. The Central Government by the impugned show cause notice has only called upon the appellant to show cause as to why that order should not be revised.

13. Counsel's contention that in the circumstances of the case, the exercise of the suo moto revisional power must at the threshold be regarded as arbitrary and must therefore be interdicted, cannot be accepted, as the interval between the date of the order of the appellate authority, and the date of the show cause notice, after duly taking note of the legal proceedings that took place in between, cannot be regarded as so gross as to render the impugned action arbitrary. In

the absence of any specification of time limit in Section 35EE(4) action initiated thereunder cannot be regarded as without jurisdiction.

14. It was also submitted by counsel that the Central Government is the Master of the excise collectorate and in this case, it has only acted to cover up the mistake committed by the Excise authority in failing to prefer the revision petition u/s 35EE(2). Though the excise department is one of the wings of the Government, the revisional power of the Central Government is a quasi judicial power and is required to be exercised with an even hand, objectively and impartially. There is no warrant for the appellant's assumption that the Central Government is only interested in protecting the orders made by the excise authorities. The appellants has on it's own showing been the beneficiary of the order made in the past by the Central Government in it's favour and against the departmental authorities.

15. It is for the assessee to answer the show cause notice and bring to the attention of the Government all the facts and circumstances which bear upon the legality and fairness or the proposed action of the Central Government.

16. We do not therefore find any merit in this appeal and the same is dismissed.