(1991) 11 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No''s. 11355 of 1989 and 21 Others

K. Thangavel APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 06-11-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 173B, 173B(4)

Citation : (1992) 58 ELT 383

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Shri V. Srikkanth, for Mr. C. Venkataraman and Mr. A. Kulasekaran, for the Appellant; Shri K. Jayachandran, ACGSC, for the Respondent

Judgement

1. The above writ petitions have been filed for the issue of Writs of Declaration declaring that the levy of excise duty and the compliance of excise duty procedure and formalities cited in Central Excises and Salt Act, 1944, as illegal in respect of the petitioners.

2. The petitioners in their respective affidavit state that they are engaged in the business of building bodies of lorries, bus or tankers as per the requirements of their customers on the chassis supplied by such customers. It is the claim of the petitioners that the bodies in the motor vehicles built by them are exempted from the payment of excise duty, that the petitioners undertake body building and fabricating process and that the nature of their transaction would not constitute them as manufacturer of motor vehicles so as to warrant liability to pay excise duty. It is also contended that the petitioners make very little profit and that a declaration as prayed for should be issued.

3. The petitioners, apparently were encouraged to file the above writ petitions in view of the two decisions relied on before me by counsel appearing for the petitioners in Darshan Singh, Pavitar Singh and Others Vs. Union of India (UOI) and Others, and in 1989 (24) ECR 281 wherein the claims of the nature sought to be revised by the petitioners came to be sustained by the learned Single

Judge of the Punjab High Court as well as the Tribunal.

4. The respondents have filed counter-affidavit in which it is contended that the petitioners are all engaged in fabricating bodies of lorries and trucks classifiable under Heading 87.04 on the chassis supplied by the customers, that they have applied for and obtained a L4 licence in the manufacture of motor vehicles in transport of goods, that they have been paying appropriate duty at the time of clearance of such vehicles till the date of the filing of the above writ petitions and that the exemption contained in the Notification No. 175/86 dated 1-2-1986 was also extended to Chapter Heading 87.07 which deals with manufacture of ready built bodies for motor vehicles under Headings 87.01 to 87.06 but not in respect of the built up motor vehicles. It is also contended that the manufacture of the petitioner has not been included in the annexure to the notification that the petitioners themselves filed respective classification lists and get the same duly approved in terms of Rule 173(B) of the Rules and that if really the petitioners consider that they are entitled to exemption it is open to them to file appropriate application or representation under Rule 173(B)(4) of the Rules for modification or classification of the list and claim exemption and so long as the approved notifications are allowed to stand and that no steps have been taken by the writ petitioners to have them modified, the petitioners could not be said to have any valid or lawful cause of action to maintain the above writ petitions. It is also contended that the nature of the transaction has got to be at least once verified by the concerned authorities and the classification lists have got to be approved or modified in the light of the business activities of the petitioner concerned, and also having regard to the governing principles of law and that the writ petitioners cannot straightaway come to this court and stall legal action and invite this court to render a finding on the claim for exemption made by the petitioners. Learned Counsel for the respondents contended that as and when the petitioners file appropriate applications for modification of the classification lists in force and orders passed thereon, there will be time enough for them to vindicate their rights either by moving the statutory authorities constituted under the Act or by invoking any other remedies, and it would be unnecessary for this Court to adjudicate the claims regarding the eligibility or otherwise of each of the petitioners for exemption at this stage in these proceedings.

5. Mr. V. Srikkanth and Mr. Kulasekaran, learned Counsel appearing for some of the petitioners invited my attention to the two decisions referred to above. The decision of the Punjab and Haryana High Court reported in Darshan Singh, Pavitar Singh and Others Vs. Union of India (UOI) and Others, was in the context and as a consequence of the department calling upon the petitioners to pay excise duty as is seen from paragraph 5 of the judgment. So far as the judgment of the Tribunal reported in 1989 (24) ECR 281 is concerned, it is obvious that the petitioner therein has gone on appeal before the Tribunal against the proceedings of the authorities below. The stand taken on behalf of the respondents was that so long as the approved classification lists in respect of each of the petitioners concerned are allowed to stand and there is no move on the part of the

petitioners to seek for modification, the petitioners have wholly misconceived their remedies in seeking for an adjudication before this Court in the first instance, merits acceptance. The nature of the transaction have got to be looked into by the competent statutory authorities and it is as well open to the authorities to consider and adjudicate the issue regarding the eligibility or otherwise of the petitioner for exemption under the notification concerned with particular reference to the nature of business carried on by each of the petitioners. The mere fact that in a given case or in respect of a group or category of cases the learned Single Judge of the Punjab and Haryana High Court or the Tribunal at New Delhi had taken up for consideration and expressed a particular view that there is no justification for the petitioners to rush to this Court avoiding an initial and effective scrutiny and consideration by the statutory authorities constituted for this purpose. Apart from a question of law being involved, the factual consideration before applying the law to the case of an individual licensee has also to be undertaken. Consequently, in the light of the stand taken in the counter-affidavit as well as before me at the time of hearing on behalf of respondents, I am of the view that the writ petitions are premature, mis-conceived and not appropriate too at this stage.

6. The petitioners shall be at liberty to move the competent authorities in the light of the judgments relied on by them, if they so desire, to have due modification or reclassification of the approved lists pertaining to each of them by bringing to the concerned authorities, the nature of the business activities and also by making suitable representations. As and when such move is made on the part of the petitioners, the concerned authority shall consider the same objectively and in the light of the judgments relied on by the petitioners, and thereafter adjudicate and decide the issue. If still the petitioners, after such adjudication, are aggrieved, they shall be at liberty to work out their remedies in accordance with law. The writ petitioners during pendency of the writ petitions appear to have obtained an interim order and given bank guarantee subject to the result of the writ petitions. Further course of action in respect of such bank guarantees will abide by the result of the adjudication by the respondents, provided the petitioners move the authorities with appropriate applications within six weeks from this date.

7. With the above observation and liberty granted, in my view nothing survives for adjudication in these cases in the light of what has been held supra. The writ petitions, therefore, shall stand dismissed, but in the circumstances of the case without costs.