(2013) 07 DEL CK 0341

In the Delhi High Court

Case No : W.P. (C) No. 4542 of 1995

Karamchand Appliances (P.) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2014) 44 GST 159

Hon'ble Judges : Sanjiv Khanna, J;Sanjeev Sachdeva, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. Karamchand Appliances Pvt. Ltd., the petitioner herein, a manufacturer of electro thermo appliances used for domestic purposes, had diluted imported insecticides under sub-heading 3808.10 of the Central Excise Tariff Act, 1985, to make them marketable. In this process, solvent, perfume and stabilizing agents etc. were added. The contention of the respondents is that this process amounts to "manufacture" and, therefore, the petitioner was liable to pay duty. The petitioner disputes the aforesaid position and in the writ petition has made a prayer that the show cause notice dated 1st November, 1995 and the circular of the respondents dated 27th July, 1995 should be quashed.

2. Normally, we do not interfere when only show cause notice has been issued and no order has been passed, but the petitioner submits that the respondents have issued a notification/circular dated 27th July, 1995 directing the authorities to treat the said process as "manufacture". It is accordingly submitted that in view of the notification/circular dated 27th July, 1995, the adjudicating authority is bound and has to pass an adverse order and nothing survives or is required to be adjudicated. Notification/circular dated 27th July, 1995 has been enclosed as Annexure A to the writ petition.

3. The said circular refers to the order of Customs Excise Board Tribunal No. 300/1993 dated 15.9.1993 in the case of Markfed Agro Chemicals v. Collector of

Central Excise holding that the process involving dilution would not amount to "manufacture" u/s 2(f) of the Central Excises and Salt Act, 1944 and records that the Central Board of Excise and Customs has not accepted the said decision of the Tribunal on merits, though no appeal was preferred as on account of ''low duty effected'' and as the judgment relied upon refers to old tariff. Therefore, in exercise of powers conferred u/s 37B of the aforesaid Act and for the purposes of ensuring uniformity in classification and practice of assessment of the said goods, the Board has ordered that the addition of chemicals and other ingredients like inert carriers or solvents and also surface active dispersing and stabilizing agents to pesticide chemicals in highly concentrated form would amount to ''manufacture''.

4. Question is whether the said circular is legal and valid as it specifically seeks to override and disputes ratio and declares decision of the Tribunal in the case of Markfed Agro Chemicals (Supra) as an incorrect and a wrong decision. We need not examine this issue in great depth and deal as similar contention was raised and answered by a Single Judge of this Court in Kissan Chemicals Vs. Union of India, . It has been held that the circular in question is contrary to the decision rendered by the Tribunal and, therefore, the Board had no right to issue the said circular incorporating directions which were contrary to the decision of the Tribunal. The judgment has further held that it was open to the revenue to move either to the High Court or the Supreme Court to get the correctness of the decision of the Tribunal contested or challenged. The Board could not have issued the circular for rendering a decision of the Tribunal as irrelevant and nugatory. It was observed that issuance of the circular by the Board in the present facts was not an appropriate remedy. The remedy actually was to challenge and question the ratio in appropriate proceedings.

5. We have been informed by the counsel for the petitioner that this decision of the Single Judge has been accepted by the respondents. This decision has also been followed by the Division, Benches of Gujarat High Court in Indichem Vs. Union of India, in Maharashtra Insecticides Ltd. Vs. Chairman, C.B.E. and C., and Himachal High Court in Commissioner, Central Excise Vs. Karam Chand, .

6. Learned counsel for the petitioner has drawn our attention to the judgment of the Supreme Court in Union of India (UOI) and Others Vs. Pesticides manufacturing and Formulators Association of India, wherein post-amendment of the tariff, the same issue was examined and it was held that amendments to Chapter 38 in 1996 and 1997 had not resulted in any difference in classification of bulk pesticides and insecticides etc. They approved of the Delhi High Court''s decision in Pesticides Mfrs. and Formulators Ascn. of India Vs. Union of India (UOI), .

7. In view of the aforesaid position, we allow the present writ petition and quash the circular dated 27.7.1995 as well as the show cause notice issued to the petitioner. In fact, we are not required to quash the circular dated 27.9.1997 as the same has already been quashed and held to be illegal by an early decision of

this Court in Kissan Chemicals (supra). However, it is made clear that if the respondents have any other grievance against the petitioner in relation to their activities or "process" undertaken they can proceed in accordance with law. The petition stands disposed of. There will be no order as to costs.