(1995) 02 MP CK 0069

In the Madhya Pradesh High Court

Case No : M.P. No. 1156/91

K.D. Wires (P) Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 59 ECR 447

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Judgement

A.R. Tiwari, J.—This is a petition under Article 226 of the Constitution of India and seeks quashment of the show-cause notice dated 1.7.1991 (Annexure-''P/1'') issued by respondent No. 3 (Superintendent, Central Excise, Dewas).

2. Briefly stated the facts of the case are that the petitioner is the manufacturer of certain products. It obtained the benefit of exemption from payment of duty on the linchpin of notification which conferred exemption on the manufacture of ''Super Enamelled Winding Copper Wire'' provided it was made out of Wire Bars/ or Rods, Bare Wire of not less than 6 mm dia. Respondent No. 3, however, found that the petitioner contravened the provisions of Rules 9(1), 52-A, 173-F and 173-G(1) of the Central Excise Rules, 1944 in as much as it claimed unintended benefits of exemption under Notification No. 69/86-CE dated 10.2.1986 as amended from time to time as also other notifications particularised in the aforesaid notices. The petitioner was asked to submit explanation and appear before the adjudicating authority within 30 days.

3. Aggrieved by this notice, the petitioner has filed this writ petition.

4. The respondents have filed the reply in oppugnation.

5. I have heard both the sides.

6. The counsel for the petitioner submitted that the show-cause notice is without jurisdiction and thus deserves to be quashed in this petition. The counsel for the respondents on the other hand submits that the notice is within the jurisdiction and the petitioner should have shown the cause and taken all objections before appropriate authority rather than approaching this Court. The respondents have also taken a preliminary objection against the tenability of this petition on the ground that recourse to Article 226 against show-cause notice is improper and the petitioner cannot be allowed to short circuit or circumvent the statutory provisions.

7. The counsel for the respondents placed reliance on the order dated 27.1.1995 passed by this Court in Misc. Petition No. 2230 of 1995 (57) ECR 572 (MP) Grasim Industries Ltd. v. The Collector of Customs and Anr. wherein this Court declined interference in the face of show-cause notice.

8. In State of U.P. and another Vs. Labh Chand, the Apex Court fittingly illumined the path as under:

When a Statutory Forum or Tribunal is specially created by a statute for redressal of specified grievances of persons on certain matters, the High Court should not normally permit such persons to ventilate their specified grievance before it by entertaining petitions under Article 226 of the Constitution is a legal position which is too well settled.

9. Later in State of Andhra Pradesh Vs. M/s. T.G. Lakshmaiah Setty and Sons, the Supreme Court in reiteration ruled that orders of assessment, rendered under Tax Laws, should be tested under the relevant Act and in no other way. Earlier it was held in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, that recourse to writ jurisdiction is not proper when more satisfactory solution is available on the terms of the statute itself. In my view, writ Court is not supposed to be killer of all evils visible in whatever shape or stage. In a recent verdict, Supreme Court has asked the High Courts to exercise their "extraordinary and discretionary power under writ jurisdiction with caution."

10. In view of the identical factual position and legal position, as considered in Misc. Petition No. 2230 of 1993, I am of the view that preliminary objections raised by the respondents should be permitted to prevail in this case also and as such this petition should also suffer the same fate. In view of this position, I do not express any opinion on the merits of the matter but dispose of this petition with directions as under:

(a) The petitioner is permitted to submit reply to the aforesaid show-cause notice (Annexure-''P/1'') before appropriate authority by 15th of March, 1995 and to take all objections as may be permissible under the law and to contest the same.

(b) The appropriate authority shall consider the objections of the petitioner and take appropriate decision on the aforesaid show-cause notice in conformity with law as early as possible and communicate its result to the petitioner.

(c) If the order turns out to be adverse, the petitioner shall have freedom to pursue appropriate remedy against the same.

11. With the aforesaid directions, this petition is disposed of finally with no order as to costs.

12. The interim order of stay passed on 29.7.1991 and continued on 6.11.1992 is hereby vacated.

13. The security cost be refunded to the petitioner after due verification.

14. Certified copy to both the sides on usual charges.