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(1987) 06 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No. 278/7

Kemwell Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-06-1987

Acts Referred:

Central Excise Act, 1944 — Section 35
Central Excise Rules, 1944 — Rule 173B, 173B (2), 8

Citation : (1987) 13 ECC 279 : (1989) 20 ECR 87 : (1987) 31 ELT 669 : (1987) 2 KarLJ 49

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : S. Naganand, for the Appellant; C. Shivappa, Central Government, Senior Standing Counsel, for the Respondent

Judgement

1. Notice rule was issued on the Central Government Standing Counsel Sri Shivappa. The matter is disposed of on merits after hearing both sides, after issuing rule.

2. The short question that is involved in this writ petition is about the correctness of the endorsement issued by the Assistant Collector, Central Excise, Yeswanthpur, dated 16-12-1986, as per Annexure-A. The main grievance of the petitioner is against this endorsement by which the Assistant Collector has expressed that there is no need to hear the petitioner under the provisions of Rule 173-B of the Central Excise Rules, 1944, before the classification list is modified. The Assistant Collector states in the said communication thus :-

"As per existing provisions of Rule 173-B of Central Excise Rules, 1944 classification list has been approved after making suitable modifications and the proper officer is empowered to modify such changes while approving as per the provisions of the said rules.

Hence it is not necessary to issue any show cause notice. You are therefore,

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requested to pay differential duty on all clearances effected from 1-3-1986 and onwards. In case you are aggrieved by my decision on clarifications you may follow the appellate procedure laid down u/s 35 of the Central Excises and Salt Act, 1944 within a period of three months from the communication of my letter dated 24-11-1986."

3. One other order which is challenged in the writ petition is the order dated 24-11-1986 (Annexure-A) passed by the Assistant Collector, respondent-2. The challenge made to this order is that the classification list filed by the petitioner, certain exemptions were claimed based on the Notification No. 175/86, dated 1-3-1986. It is necessary to state that 12 classification lists were filed under the new Tariff Act which came in to force from 1-3-1986. In the said classification lists are given the tariff heading, the rates of duty and the exemptions claimed under the several notifications issued by the Central Government in exercise of the powers issued under Rule 8. What is relevant for the purpose of this petition is the Notification No. 175/86.

4. As per the order of the Assistant Collector (Annexure A) which is in challenge in the writ petition, the Assistant Collector has allowed exemption under some of the notifications and has further held that the petitioner is not entitled to exemptions in respect of the value of its manufacture holding that the Notification No. 175/86 is not applicable to the petitioner''s case.

5. After this order was made, the petitioner addressed a letter to the Assistant Collector, as per Annexure-B, seeking opportunity to explain its case and put forth the grounds for exemption and applicability of the several notifications. To this letter, the Assistant Collector, as already stated, issued an endorsement as per Annexure-C, that no notice/hearing is contemplated under Rule 173-B before the classification lists are approved with ''modifications. This view of the Assistant Collector is questioned as erroneous in this writ petition.

6. Classification lists are filed as required under the Act and under the Rule 173-B for approval by the proper officer. Under Rule 173-B(2), the proper officer is required to approve the list with such modifications as are considered necessary after holding such enquiry as it deems fit. It is only thereafter that the duty payable by the assessee is to be determined. After this enquiry, as is contemplated under the other provisions of the rules, that an assessment of the duty payable is made. Section 35 provides for appeal to Collector (Appeals) against any decision or order passed under the Act by the adjudicating authority and as provided under the provisions of Section 35 of the Act.

7. The approval of classification list is an important stage in the proceedings for assessment before the duty payable under the Act is determined by the adjudicating authority. The Assistant Collector, in this case, seems to think that no hearing is necessary as contemplated under Rule 173-B. While putting this in writing as per Annexure-C, he has obviously ignored importance and scope of the provisions of Rule 173-B which contemplates an enquiry before the classification

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list is modified.

8. Suffice it to say that the enquiry contemplated under Rule 173-B is mandatory and the order made by Assistant Collector, as per Annexure-A, is liable to be set aside on this sole ground. This is also in consonance with the rules of natural justice. What is more, under the scheme of the Act which is a taxing statute, it is needless to state that this opportunity of being heard is a condition precedent before a demand is made or the duty is quantified and any order which is likely to prejudice and affect the assessee, is made.

9. In the result, writ petition is allowed and the order Annexure-A, is set-aside. The matter is remanded to the Assistant Collector, 2nd respondent, to make a fresh order in accordance with law and after issuing show cause notice under Rule 173-B and after hearing the petitioner.

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