(1997) 11 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 79 of 1994

Kinetic Honda Motor Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 173C
Central Excises and Salt Act, 1944 — Section 4
Constitution of India, 1950 — Article 226

Citation : (1998) 59 ECC 49 : (1998) 98 ELT 594

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : S.N. Kohli, for the Appellant; B.G. Neema, for the Respondent

Judgement

Deepak Verma, J.—In this petition, filed under Article 226 of the Constitution of India, petitioner is challenging the show cause notice dated 11-10-1993 issued by Assistant Collector, Central Excise, Indore, calling upon it to submit its reply to the same.

2. Petitioner No. 1 is a Company duly incorporated under the Companies Act of 1956. It has set up its industrial plant for manufacturing and sale of two wheeler scooters at Pithampur in the backward district of Dhar. Petitioners have submitted that the excise duty is chargeable with reference to value. The valuation of excisable goods for the purpose of assessment of assessable value is determined in accordance with Section 4 of the Central Excises and Salt Act, 1944 (hereinafter shall be referred to as ''the Act''). Petitioners have further contended that under Rule 173C of Central Excise Rules, 1944, every assessee who manufactures goods which are chargeable to duty of excise on the basis of its value, has to file with the proper officer a price list showing the price of such goods and the trade discount along with such necessary particulars.

3. Petitioners have also urged that the respondents all along had approved the price list submitted by the petitioners, therefore, it was not justified on the part

of respondents to serve show cause notice.

4. Respondents have filed their reply in oppugnation. They have submitted that a wholesale dealer in India cannot be considered as belonging to different class of buyers simply because they are located in different region of the country. Unless there are different class of buyers there cannot be different normal prices for excise purposes u/s 4 of the Act.

5. In the instant case, according to the respondents, the petitioners are selling the goods to wholesale dealer in M.P. at one rate and in other States at reduced rates. Whereas, the class of buyers in whole of India is wholesale dealer. On finding out this anomaly, petitioners have only been issued a show cause notice. Instead of appearing before the authority concerned the petitioners have approached this Court against issuance of such show cause notice in a post-haste manner. Respondents have strongly contended that petitioners should be directed to appear before the authority concerned and show cause as the grounds on which the notice deserves to be filed.

6. I have heard the Counsel for parties. Perused the record.

7. Shri Kohli, appearing for the petitioners have cited the following judgments :-

(i) Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, ;

(ii) L. Hirday Narain Vs. Income Tax Officer, Bareilly, ;

(iii) Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, ;

(iv) 1978 (2) E.L.T. (632) (M.P.) [Universal Cables Ltd. v. Union of India and Ors.];

(v) Dharamsi Morarji Chemical Co. Ltd. Vs. Union of India (UOI) and Another, ;

(vi) Hindustan Electro Graphites Ltd. Vs. Union of India (UOI), ;

(vii) Jayant Vitamins Limited Vs. Union of India (UOI),

(viii) M.P. No. 1817/1991 [Sonic Electrochem Pvt. Ltd. and Anr. v. Union of India and 4 Ors.];

(ix Bajaj Tempo Limited Vs. Union of India, :

(x) Tata Export Ltd. Vs. Union of India (UOI) and Others, .

8. On the basis of aforesaid judgments mentioned above, Shri Kohli submitted that even against issuance of show cause notice, writ under Article 226 would be maintainable provided the petitioner is able to show to this Court that notice is wholly without jurisdiction or it smacks of arbitrariness. His contention is that the availability of an alternative remedy is not an absolute bar for not invoking the jurisdiction conferred on this Court under Article 226 of the Constitution.

9. On the other hand Shri B.G. Neema, appearing for respondents have relied on the following judgments :-

(i) Methodex Systems Pvt. Ltd. Vs. Union of India (UOI), ;

(ii) M.P. No. 1085/89 [Shree Synthetics Ltd. v. Union of India and Ors.], decided on 13-1-1995; (iii) L.P.A. 13/95 [Grasim Industries Ltd. v. Union of India and Ors.], decided on 21-7-1995;

(iv) L.P.A. 21/95 [Surya Agro Oils Ltd. v. Union of India], decided on 28-4-1995; (v) M.P. No. 434/87 Shri Ishar Alloy Steels Ltd. Vs. Union of India (UOI), :

(vi) 1993 MPLJ 924 [Birla Jute Industries v. Union of India and Ors.].

10. On the basis of aforesaid judgments, Shri Neema submitted that in the aforesaid cases it has been held repeatedly by this Court that against show cause notice, no interference is called for and the noticee should be directed to appear before the authority concerned and to show cause.

11. In the light of the aforesaid contentions raised by the parties, I have heard them at length and perused the record.

12. The fact remains that this petition has been preferred only against a show cause notice issued to it. Petitioners have so far not filed any reply to the said show cause notice. Petitioner''s apprehension is that the said so called notice has been issued to it on the basis of the judgment of Bombay High Court reported in Godrej and Boyce Manufacturing Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, ; which has been set aside by the Supreme Court.

13. Thus, the very jurisdiction of the authority issuing notice has been challenged. In AIR 1984 SC 754 [State of U.P. v. Labh Chand], it has been held as under :-

"What 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 grievances before it by entertaining petitions under Article 226 of the Constitution is a legal position which is too well settled".

14. Show cause notices are not the end but beginning of the matter. Absence of jurisdiction or erroneous exercise of jurisdiction are not liable to be intermixed. It has not been suggested that the notice sought to be impugned is not under the relevant Act or provision or not by the proper authority. Therefore, it would not be proper to invoke the jurisdiction of this Court. The consistent view by this Court has been that against issuance of show cause notice to a party, the jurisdiction conferred on this Court under Article 226 of the Constitution should not be invoked.

15. I find myself in complete agreement with the judgments which have been cited by the learned Counsel for respondents. It is not a fit case where for any

other reason, any case is made out for invocation of the writ jurisdiction. Petitioner has certainly approached this Court in post-haste manner. There is nothing on record to show or suggest that respondents have prejudged the issue or are sitting with pre-determined mind. I, therefore, decline any relief to the petitioners and dispose of this petition with the directions as under :-

(i) The petitioners shall have the freedom to submit their reply within a period of one month from today and to raise, if so advised, all objections which may be permitted to be raised in accordance with law.

(ii) On such a reply being filed, the authority concerned shall consider all aspects of the matter and shall also give opportunity of hearing to the petitioners. Only thereafter it is expected of the authority concerned to pass a reasoned order.

(iii) In the event of adverse orders passed by the authority, the petitioners shall have recourse to the remedies available under the aforesaid Act.

16. Thus, without entering into the merits or demerits of the case, I dispose of the petition as mentioned above, leaving the parties to bear their own costs. Security amount, if any, be refunded back to the petitioner, after its due verification.