
(1997) 04 MP CK 0046

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No's. 1823, 1824 and 1825 of 1991

Kinetic Honda Motor Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-04-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 57G(1), 57I
Central Excises and Salt Act, 1944 — Section 11A, 11A(1), 35B
Constitution of India, 1950 — Article 226, 227, 265

Citation : (1997) 94 ELT 297

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : Atul Sitalwad and S.N. Kohli, for the Appellant; P.K. Saxena and B.G. Nema, for the Respondent

Judgement

N.K. Jain, J.—This order shall also dispose of M.P. Nos. 1824/91 and 1825/91 as similar questions of law and facts are involved in all these petitions.

2. By this petition filed Articles 226, 227 and 265 of the Constitution of India, the petitioners seek quashment of show cause notice (Annx. - F) issued on 30-9-1991 by respondent No. 2, the Collector of Central Excise, u/s 11A of the Central Excises & Salt Act, 1944 (for short, "the Act"), read with Rule 57-I of the Central Excise Rules, 1944 (for short, "the Rules").

3. The petitioner No. 1 is a Company duly incorporated under the Companies Act, 1956. Petitioner No. 2 is a shareholder of the Company. The petitioners have a factory at Pithampur in M.P. where they manufacture motor scooters with engine capacity of 90 cc and mopeds with engine capacity of 50 cc or less. The petitioners while seeking Modvat credit filed declaration forms with respondent No. 3 declaring two wheeled motor vehicles as their final products without distinguishing between scooters and mopeds. Total amount for which the credit was availed of during the period from Oct. 1987 to 31st March, 1991 amounted to Rs. 2.57 crores.

4. The respondent No. 2 has issued the impugned show cause notice u/s 11A of the Act alleging that Modvat credit was illegally availed of by the petitioner inasmuch as the credit pertaining to the inputs used in manufacture of mopeds was utilised to pay duty payable on scooters. The respondents have resorted to proviso to Sub-section (1) of Section 11A of the Act on the allegation that the excise duty could not be levied by reason of wilful mis-statement and suppression of facts by the petitioners with intent to evade payment of duty.

5. The petitioners have challenged notice Annx. - F as having been issued without jurisdiction. According to them they were entitled to avail the credit accrued on mopeds in payment of duty on scooters as both the products are one and the same final product, namely; "motor cycles" covered under the same Chapter of the Act. It is further contended that in their declarations under Rule 57G(1) it has been specifically stated that the petitioner Company manufactures one finished product namely, "two wheeled motor vehicle". This was done by the petitioners at all times and the Department never raised any objection. There was thus no mis-statement or suppression of facts by the petitioners. Under the circumstances, resort to the proviso to Sub-section (1) of Section 11A, it is contended, is without jurisdiction and the show cause notice is, therefore, barred by limitation.

6. Respondents have filed return in oppugnation.

7. I have heard Shri Atul Sitalwad, learned Sr. Counsel appearing with Shri S.N. Kohli, Adv., for the petitioners and Shri P.K. Saxena, learned Sr. Counsel appearing with Shri E.G. Nema, Adv., for the respondents.

8. Shri Saxena besides contesting the petition on merits has raised preliminary objection as to the tenability of the petition on the ground of availability of alternative remedy. He contended that the petitioner should contest the notice before respondent No. 2 himself and resort to appropriate remedy.

As against it, Shri Sitalwad submitted that the show cause notice being without jurisdiction it is amenable to interference in writ jurisdiction of this Court. He contended that the petition having been admitted should now be disposed of on merits. He has placed reliance on :

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

(b) Universal Cables Ltd. v. U.O.I. -1978 (2) E.L.T. (632)

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

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

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

(f) Sonic Electrochem Pvt. Ltd. v. U.O.I. - Judgment dated 17-1-1994

(g) Bajaj Tempo Ltd. v. Union of India - Judgment dated 8-9-1994

9. It could not be disputed that the Collector, Central Excise has power u/s (1) of Section 11A to issue show cause notice in the cases where duty has not been paid or short levied or short paid or erroneously refunded. He on receipt of representation which may be made by the noticee, is further empowered under Sub-section (2) to consider the representation and determine as to whether any excise duty is due from the noticee. Needless to add, it is open for the noticee in such proceedings to represent that the notice is barred by time and that his case does not fall within the proviso to Sub-section (1) of Section 11A in that there was no fraud or collusion or wilful mis-statement or suppression by the noticee. There is no reason as to why these questions cannot be gone into by the Collector and decided before determining the excise duty, if any, due from the noticee. Section 11A thus provides for a complete Code for adjudication of the matter. Any order passed by the Collector, Central Excise is appealable to the appellate authority u/s 35B of the Act. Under the circumstances, resort to writ jurisdiction of this Court by the noticee is not permissible.

10. In the case of State of U.P. and another Vs. Labh Chand, it is held :

"When a Statutory Forum or Tribunal is specially created by a statutes 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."

11. This Court in the case of Grasim Industries Ltd. Vs. Collector of Customs and C. Ex., in para 17 held :

"It is, thus, inutile to contend that proper authorities would or might elect to be unjust and equally futile to assume that proceedings, born and beginning with notices, inevitably excoriates the notices. Assesseees and adjudicators are not sworn enemies or ought not to appear that way but are governed by respective rights and responsibilities manifested by law. The object behind notices is to hear the converse and adverse view and decide the matters "Sine ira et Studio". There is neither pride, nor prejudice or there ought to be none. There has to be "fair play" in action. This is amply demonstrated by the system which does not permit condemnation without being heard. There is no case or cause to feel that Departmental adjudications are like courses from Ceaser to Ceaser's wife. It is aptly said that the world is comedy to those who think but tragedy to those who feel. It is prudent to stop feeling and start thinking."

12. Again in the case of Methodex Systems Pvt. Ltd. - M.P. No. 650/1986, decided on 11-9-1996, under the similar fact situation this Court in para 11 observed :

"Show cause notices" are not the end, but beginning of the matter. "Absence of jurisdiction" and "erroneous exercise of jurisdiction" are not liable to be intermixed. It is not suggested that notice is not under the relevant Act or provision or not by the proper authority Writ Court, these days, is receiving

matters which can appropriately be contested at other forums fixed by relevant Acts. It is not the time, ripe indeed, to exercise restrain, halt rush and push such cases towards their proper destination ? The Calendar of Court is quite congested. Should the Writ Court then be not more strict to prevent inflow of cases which can be examined elsewhere and possibly with specific expertise?"

13. The decision rendered in the case of Methodex Systems P. Ltd (Supra) stands confirmed by the Division Bench of this Court in L.P.A. and the SLP preferred by the noticee was also dismissed in motion by Hon"ble the Supreme Court.

14. It will be thus seen that latest view of the Apex Court as also of this Court is that power under Article 226/227 should not be exercised where alternative remedy is available and which has not been availed of. I see no reason to take different view in the instant case even when the petition stands admitted. Any interference of this Court at the stage of show cause would render provisions of the Act redundant. When an authority is created under statute which is required to perform certain functions or discharge certain duties, it should be allowed to perform such functions and discharge duties. Powers under Article 226/227 should not be exercised to make such authority non-functional.

15. I, thus decline to enter into the merits of the petition and dismiss the same leaving the petitioners free to raise all the contentions raised herein, before the respondent No. 2. In the event of adverse order the petitioners may also have recourse to appellate jurisdiction available under the Act.

16. The petition thus stands disposed of as aforesaid but without any order as to costs. The stay order passed by this Court shall also stand vacated.

17. Security deposit, if any, shall be refunded to the petitioner after due verification.