(1989) 09 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No''s. 2781 of 1980 and 97 of 1981

Kolhapur District Granulated Fertiliser Co-operative Factory Limited — APPELLANT

Vs

Government of India and Others — RESPONDENT

Date of Decision : 20-09-1989

Acts Referred:

Citation : (1992) 42 ECR 285

Hon'ble Judges : C. Mookerjee, C.J;Sharad Manohar, J

Bench : Division Bench

Judgement

C. Mookerjee, C.J.—By filing these two Writ Petitions, the Petitioner has challenged in the different cases the order of the Assistant Collector of Central Excise confirming the show cause notice for payment of excise duty, the appellate orders of the Collector and the order in revision passed by the Government of India. In these matters the principal question was whether or not the Petitioner was entitled to claim exemption of so much of duty as had been paid on the base materials used in manufacturing granulated mixed fertilisers. In order to claim such credit of duty, if any, paid upon the base materials used in the mixed fertilisers manufactured by the Petitioner, the Petitioner had produced before the Assistant Collector certain materials to substantiate that the said base materials consisting of urea, ammonium sulphate, potash, super phosphate, etc., were imported from foreign countries. The Food Corporation of India or other agencies which, according to the Petitioner, had imported the said base materials had paid countervailing customs duty. The Petitioner, however, did not directly purchase the materials from the importers. Its case was that the Food Corporation of India and the other agencies which had made the import had sold the materials to their distributors. The Petitioner in its turn had purchased the materials from the distributors. The question whether duty had been paid upon these base materials purchased by the Petitioner was one of fact. We have already noted that none of the authorities had accepted the Petitioner''s claim in respect of the periods covered by these Writ Petitions.

2. The Assistant Collector of Central Excise, Kolhapur Division, in his order dated 30th June 1972 which is subject matter of Writ Petition No. 2781 of 1980 was fully cognizant of the provisions of Rule 56A of the Central Excise Rules, 1944 and also of the relevant notification under which mixed fertilisers were exempt from central excise duty under the circumstances mentioned in the said notification. Therefore, it cannot be said that the Assistant Collector was unaware of the provisions. He has discussed in detail the evidence adduced before him to substantiate the claim of payment of excise duty and/or countervailing customs duty upon the base materials used in manufacturing mixed fertilisers by the Petitioner. According to the Assistant Collector, although the Petitioner had produced certificates from the Zonal Manager of the Food Corporation of India, the certificates from M/s. Deccan Sales Corporation from whom the Petitioner had made the purchases were not obtained. Therefore, according to the Assistant Collector, there was nothing to show that the suppliers of the Petitioner M/s. Deccan Sales Corporation had sold to the Petitioner materials out of the quantities covered by the certificates issued by the Zonal Manager of the Food Corporation of India.

3 In appeal, the said finding about the insufficiency of the materials to link the base materials used by the Petitioner with the imports made by the importing agencies was affirmed. In revision, the Government of India, Ministry of Finance, had concurred with the said concurrent finding of fact about the insufficiency of proof regarding payment of duty upon the base materials used by the Petitioner.

4. The additional compilation filed before us on behalf of the Petitioner did not carry the matter further. It is not very much in dispute that apart from the materials considered by the Assistant Collector, the Collector and the Government of India, there was no other material in support of the Petitioners'' claim. Exercising writ jurisdiction, it is not open to us to enter into the quality of the evidence adduced or to decide whether the said evidence was sufficient for arriving at the conclusion reached by the departmental authorities. We cannot assume powers of the appellate Court to make fresh appreciation of evidence or to decide the probative value of the materials on which the Petitioner had unsuccessfully relied before the departmental authorities in support of its claim.

5. In Writ Petition No. 97 of 1981 which substantially involves similar question of fact, the learned Counsel for the Petitioner has tried to rely upon the fact that originally five demand notices had been issued by the office of the 3rd Respondent, vide page 33 of the compilation, but ultimately demand notices dated 1st April 1971, 22nd October 1971 and 23rd February 1974 were not proceeded with, for the reasons recorded in the orders dated 10th August 1976, 30th August 1976 and a third order. Mr. Abhyankar has pointed out that in making these orders the Assistant Collector had mentioned that upon subsequent verification of the factory''s records and other documentary evidence obtained by the Superintendent, Central Excise, Kolhapur-II, he had observed also having satisfied himself that the base fertilisers used in the manufacture of the above

granulated/mixed fertilisers were secured by the factory from various dealers and sources who generally deal in duty paid materials of base fertilisers. We cannot accept the further submission made on behalf of the Petitioner that in deciding the present cases impugned in the Writ Petitions a different standard of proof was insisted upon by the authorities. We are not in a position to record a finding of our own that the dealers from whom the Petitioner had obtained base materials generally dealt in duty paid materials and, therefore, an inference ought to be drawn that duty in fact had been paid at the time of their import and the Petitioner was entitled to exemption to that extent. The same again was a matter not of law but of fact.

6. For the foregoing reasons, we conclude that none of the orders impugned in the two Writ Petitions suffers from the infirmities which will warrant interference in writ jurisdiction. We accordingly discharge the rules. There will be no order as to costs.