
(1999) 09 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 7438 of 1989 and W.M.P. No. 10604 of 1989

K.P.M. Industries

APPELLANT

Vs

Collector of C. Ex. (Appeals)

RESPONDENT

Date of Decision : 21-09-1999

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q

Central Excises and Salt Act, 1944 — Section 35B

Citation : (2000) 68 ECC 237 : (2000) 115 ELT 314

Hon'ble Judges : P. Satyasivam, J

Bench : Single Bench

Advocate : Sriram Penolu, for the Appellant; V. Velumani, Additional Central Government Standing Counsel, for the Respondent

Judgement

P. Satyasivam, J.—Aggrieved by the Order of the first respondent in Appeal No. 6 of 1989 (T) dated 28-2-1989 the petitioner has filed the

above writ petition to quash the said Order and also direct the respondents to classify the forged piece of Iron or Steel manufactured by the

petitioner under Tariff Heading 7208 of the Central Excise Tariff Act, 1986.

2. The case of the petitioner is briefly stated hereunder :

The petitioner is a firm which inter alia manufactures roughly shaped pieces by forging iron or steel. These are semi finished products. They have a

rough appearance and require considerable further work to be done to them before they assume the shape of finished products usable for the

required purposes. From 1-3-1986 onwards the petitioner is classifying and clearing the said products under Chapter Heading 7208 of the Central

Excise Tariff Act, 1986. Under Notification No. 208/1983 final products falling under 7208 are exempted from duty if they were made from

goods of specified description. The petitioner's products were made from goods of the specified description and thus under the said Notification

No. 203/83 dated 1-8-1983 the roughly shaped piece made by forging of iron or steel are exempt from the levy of duty of excise. While so, the

Superintendent of Central Excise, City Range Trichy issued a show cause notice dated 23-9-1987 to the petitioner calling upon them to show

cause why the said products should not be classifiable under Sub Heading 7308.90 and why a penalty should not be imposed on the petitioner etc.

The petitioner submitted his reply dated 23-10-1987 disputing the claim made by the said Officer. By Order dated 26-8-1988 the second

respondent held that the petitioner's products were classifiable under Heading 7308.90. He also confirmed the demand. He imposed penalty of

Rs. 500.00 under Rule 173Q of the Central Excise Rules, 1944. Thereafter, the petitioner filed an appeal against the said Order to the first

respondent. The first respondent by the impugned Order upheld the second respondent's classification under Heading 7308.90 and dismissed the

appeal, however set aside the penalty imposed by the second respondent.

3. Second respondent has filed a counter affidavit disputing various averments made by the petitioner. It is stated that the petitioner has a right to

file an appeal to the Tribunal as per Section 35-B of the Central Excise Act. This remedy is an effective remedy especially when the question

involved relates to classification of goods, accordingly the present writ petition is liable to be dismissed. With prejudice to the said objection, it is

stated that the petitioner's products are made according to specification of the customers and the end products are delivered to the respective

customers. Therefore, the interpretation and contentions of the petitioner are not valid and the product of the petitioner cannot be classified under

Tariff Heading 7208 and is rightly classified under Tariff Heading 7308.90. It is further stated that the product of the petitioner is according to

specification. Considering the nature of the product the respondent have correctly classified the same under Heading 7308.90.

4. In the light of the above pleadings, I have heard Mr. Sriram Penolu, learned Senior Counsel for the petitioner and Ms. V. Velumani, learned

Additional Central Government Standing Counsel for the respondents.

5. The only point for consideration is whether the product in question is

classifiable under Clause 7208 of the Central Excise Tariff Act as claimed

by the petitioner or under Heading 7308.90 as contended by the respondents,

6. Even at the outset Mr. Sriram Penolu, learned Senior Counsel for the petitioner after taking me through both the classification as well as various

particulars mentioned in the affidavit with regard to the product in question would contend that, in view of the fact that the product is a roughly

shaped piece of forging iron or steel and are semi-finished products, they come under the classification Heading 7208, accordingly they are

exempted from duty. The said arguments have been stoutly disputed by the learned Additional Central Government Standing Counsel for the

respondents. It is their case that the petitioner's products are according to specification of their customers and the end products are delivered to

the respective customers, hence the product in question is classifiable only under Tariff Heading 7308.90 attracting Central Excise duty.

7. Before considering the above aspect, it requires more particulars relating to the subject, I am constrained to consider the preliminary objection

raised by the learned Additional Central Government Standing Counsel. Even in para 2 of the counter affidavit it is specifically stated that the

petitioner has a right to file a statutory appeal to the Tribunal as per Section 35-B of the Central Excise Act. It is also stated by her, since the

remedy is effective remedy especially when the question relates to classification of goods in support of her contention she very much relied on the

recent decision of the Supreme Court reported in The Assistant Commissioner of Sales Tax Vs. P. Kesavan and Co., .

8. In that decision the principal question is whether the strapping is a fabric made from rayon yarn or not. After noting that no material was placed

before the Court at the time of hearing of the Writ Petitions, their Lordships have observed :

...In view thereof, we think that the writ petitions ought not to have been entertained and the respondents ought to have been directed to agitate

their grievances before the authorities under the Act. These authorities would have been in a better position to see and appreciate the necessary

evidence and determine whether or not the said strapping was something that fell within the scope of Entry-7 Schedule-III to the Act.

Their Lordships have further observed :

5. Where technical matters are involved, and particularly when processes of manufacture have become increasingly complicated, it is appropriate

that the authorities best competent to deal with such matters should be allowed to do so. The learned single judge was swayed by the fact that

some time had already elapsed since the writ petition was admitted. Far less time had elapsed then than has elapsed now. The Division Bench cited

Judgments in support of the view that it was not necessary to refer the respondents to the authorities under the Act. It does not appear to have

appreciated that regard must be had to the facts of each case. Where sufficient evidence is placed before the Writ Court for an unambiguous

conclusion upon technical matters to be reached, these authorities might be opposite, but we must stress that where intricate technical processes

are involved, it is proper that the writ court should direct writ petitioners to agitate their grievances before statutory authorities who are more

competent to assess the merits thereof.

Even though Mr. Sriram Penolu, learned Senior Counsel has demonstrated that the product in question are semi-finished products, they have rough

appearance and require considerable further work to be done by the producers before they assume the shape of finished products usable for the

required purposes, as observed by their Lordships, in the interest of both parties, I am of the view that the matter has to be considered by the

Tribunal as per Section 35-B of the Central Excise Act. No doubt, the above writ petition is kept pending for nearly 10 years and it may not be

justified in asking the party to approach the appellate authority. In view of the law laid down by the Apex Court, I am constrained to direct the

petitioner herein to file an appeal to the Tribunal as per Section 35-B of the Act. Even the pendency of the writ petition for quite sometime was

considered by their Lordships in para 5 of their order. Since I am directing the petitioner to approach the appellate authority, it is unnecessary for

me to refer the other contentions raised by the learned Senior Counsel for the petitioner.

9. In the light of what is stated above, the petitioner herein is directed to file an appeal to the Tribunal as per Section 35-B of the Central Excise

Act within a period of 30 days from to-day. It is made clear that, if the appropriate proceedings are adopted by the petitioner within the time

stated above, the same shall be decided without taking the aspect of limitation into account as observed by their Lordships in para 7 of the said

Order. The petitioner is at liberty to raise all the contentions raised herein before the Tribunal in the proposed appeal.

10. The Writ Petition is ordered accordingly. No costs. Consequently, connected WMP is closed.