(1991) 03 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 236 of 1991

L.M.L. Fibres Ltd. APPELLANT

Vs

Assistant Collector of Central Excise RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 230, 5
Constitution of India, 1950 — Article 226

Citation : (1992) 58 ELT 501

Hon'ble Judges : B.P. Jeevan Reddy, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : Santanam, for the Appellant;

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—This writ petition is filed by (1) L.M.L. Fibres Ltd. and (2) Prakati Synthetics Ltd., for issuance of writ of certiorari or other appropriate writ, order or direction quashing the order of detention passed by respondent No. 1 (Assistant Collector of Central Excise, Division-I, Kanpur) and declaring the same ultra vires, illegal and without jurisdiction and for other incidental reliefs. In the impugned order the Assistant Collector of Central Excise recite the following facts.

2. An amount of more than rupees one and half crore towards Central Excise dues is recoverable from M/s. L.M.L. Fibre Ltd., Panki Industrial Estate, Kanpur in terms of order No. E/78-80/90-D, dated 8-2-1990 passed by CEGAT. The party was called upon to deposit the said amount by the Superintendent of Central Excise through his letter dated 5-6-1990 and again by another letter dated 30-8-1990. They failed to make the payment in spite of the said letters. Accordingly, in exercise of the powers vested in him by Rule 230 of Central Excise Rules, 1944, as delegated by the Collector, Central Excise by his notification dated 20-3-1991 under Rule 5 of the said Rules, the excisable goods belonging to M/s. L.M.L. Fibre Ltd., as detailed in the annexure to the order are

detained until such dues are paid.

3. Now the petitioners'' contention is that the Central Excise dues are claimed against M/s. L.M.L. Ltd. and that M/s. L.M.L. Fibre Ltd. is a different legal entity distinct from L.M.L. Ltd. It is also stated that Prakati Synthetics Ltd. is also a different legal entity from L.M.L. Fibre Ltd. The order of the CEGAT dated 8-2-1990 referred to in the detention order, it is submitted by the petitioners, is the order against L.M.L. Ltd. and not against L.M.L. Fibre Ltd., and therefore, the said dues are not recoverable from L.M.L. Fibre Ltd. It is also submitted that the goods detained do not belong to L.M.L. Fibre Ltd. as stated in the impugned order but that they belong to the second petitioner, namely Prakati Synthetics Ltd. It is, therefore, contended that the goods in question could not have been detained at all.

4. It, however, appears that after the said detention order was passed and the goods were detained, neither petitioner approached the Assistant Collector of Central Excise with a representation that the goods do not belong to M/s. L.M.L. Fibre Ltd. or saying that L.M.L. Fibre Ltd. is different legal entity from L.M.L. Ltd. Straightaway, the petitioners approached this Court by way of this writ petition. The contentions raised by the petitioners are not pure questions of law but are essentially one of fact. Whether L.M.L. Ltd. and L.M.L. Fibre Ltd. are one and the same or are distinct entities? Similarly whether L.M.L. Fibre Ltd. and Prakati Synthetics Ltd. are one and the same or are distinct legal entities and further the question whether the goods detained belong to L.M.L. Ltd. or to Prakash Synthetic are all questions of fact. Indeed the learned Standing Counsel for the Central Excise has sought to place before us an undertaking executed by the L.M.L. Fibres Ltd. stating that L.M.L. Fibres Ltd. is responsible for the liabilities, pending and future, of Prakati Synthetics Ltd. Be that as it may, before we can interfere in the exercise of supervisory powers under Article 226, there must be a demand and denial of justice. The petitioners ought to have immediately approached the detaining authority with a representation/objection petition stating the facts which they are stating now in this writ petition. If their representation/objection petition had been rejected or if it remained undisposed of within a reasonable period, this court would interfere, but this Court cannot be converted into original authority. These factual objections cannot be raised for the first time in this Court.

5. The proper course for the petitioners is to approach the detaining authority with a representation raising such objections as are open to them in law. If the petitioners file any such representation the detaining authority shall dispose of the same within seven days of the filing of the said representation in accordance with law and communicate a copy of his order to the petitioners. Thereupon it shall be open to the petitioners to avail such remedies are open to them under law.

6. Shri Santanam learned counsel for the petitioners submits lastly that the above direction should be given to the Collector, Central Excise and not to the

Assistant Collector of Central Excise because according to him, the Assistant Collector of Central Excise is acting on the direction of the Collector of Central Excise. We cannot do so, for the simple reason that the order of detention is passed by the Assistant Collector of Central Excise and it is not brought to our notice that the Collector of Central Excise has ever decided or directed that the detained goods belong to L.M.L. Fibres Ltd. and not to Prakati Synthetics Ltd. nor he has decided the other contentions raised herein.

7. The writ petition is dismissed with the above observations. No costs.