(1991) 12 MP CK 0002

In the Madhya Pradesh High Court

Case No : M.P. No. 1103/91

Lupin Laboratories Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-12-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 57(I), 57A, 57F, 57G
Constitution of India, 1950 — Article 226

Citation : (1992) 38 ECC 305 : (1992) 59 ELT 375

Hon'ble Judges : V.D. Gyani, J;S.D. Jha, J

Bench : Division Bench

Advocate : A.M Mathur and C.B. Patne, for the Appellant; B.G. Neema, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, J.—Shri A.M. Mathur, Senior Advocate, with Shri C.B. Patne, for the petitioner and Shri B.G. Neema, Central Govt. Advocate, for the respondents, were heard on admission and on application for ad interim relief.

2. The present petition challenges order dated 10-6-1991 disallowing MODVAT credit to the petitioner to the extent of Rs. 79,38,597.50 and imposing penalty of Rs. 5 lakhs in respect of ''Cephalazin'' cleared by the petitioner during the period January, 1989 to August, 1990 as also withdrawing the facility of taking MODVAT with immediate effect.

3. Shri Mathur submitted that all the necessary facts for availing MODVAT credit in terms of Rule 57A read alongwith Rules 57F, 57G, of Central Excise Rules, 1944 and other relevant rules on the subject were disclosed to the department and, therefore, the Respondent No. 2 was in error in applying the 5 years time period for raising demand against the petition under proviso to Rule 57(I) of the Central Excise Rules, 1944. In support of his contention Shri Mathur relied on Jayant Vitamins Limited Vs. Union of India (UOI), ; Collector of Central Excise, Hyderabad Vs. Chemphar Drugs and Liniments, Hyderabad, and Padmini

Products Vs. Collector of Central Excise, Bangalore, and urged for admission of the petition and confirmation of ex parte ad interim stay granted vide order dated 13-7-1991.

4. Opposing Shri Mathur''s contention Shri B.G. Neema submitted that the petitioner has an alternative remedy of filing appeal to CEGAT, New Delhi, and further right of appeal to the Supreme Court and without exhausting the alternative remedy he has directly approached this court against the order passed by the Collector. He also submitted that the case involves disputed facts and the petitioner should be called upon to exhaust alternative remedy of appeal to CEGAT and this court should not invoke its writ jurisdiction in the matter. In support of his contention Shri Neema relied on Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, Hindustan Burlop v. Union of India and Others, Civil Misc. W.P. No. 751/85 decided on 1-10-1985 by Allahabad High Court, Grasim Industries Ltd. v. Assistant Collector 1983 (36) E.L.T. 391 (M.P.), Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, and M/s. Noble Soya House Ltd. Mandideep v. Union of India (M.P. No. 425/90 decided on 4-5-1990) of this court.

5. Notice dated 28/1190/3-12-90 Annexure ''T'' to the petition addressed to the petitioner by the Collectorate, Customs & Central Excise, Indore, alleges misusing of MODVAT credit and misdeclaration of inputs, misleading the department by furnishing incorrect declaration intentionally and deliberately to avail MODVAT credit otherwise not admissible, removal of items which are not inputs for the final product and which has not been used in or in relation to manufacture of final product of Cephalzin and Cephadroxil, not filing the requisite declaration in terms of Notification No. 214/86, dated 1-3-1986, wilfully availing of the credit amounting to Rs. 73,38,597.50 in respect of items not declared, suppression of facts in respect of certain items and failing to maintain proper account. Adjudication order dated 10-6-1991 passed by the Respondent No. 2 after reciting facts and contentions of the petitioner and their advocates, in discussion and findings inter alia found that the noticee petitioner had availed credit of inputs which was not used in or in relation to the manufacture of their final product. The noticee used as input goods in respect of which requisite permission was not granted, had never disclosed ''7 ADCA'' as their intermediate product, had been sending raw material directly from the suppliers to the factory at Ankleshwar without specific permission from the Assistant Collector, proper record was not maintained, the petitioner did not follow the procedure prescribed in Central Excise Rules and deliberately suppressed the fact by not making a correct declaration as to use of the inputs with the intention to avail wrong credit and to evade payment of Central Excise Duty. The Collector also found that the petitioner had wrongly availed and utilized MODVAT credit report of caustic soda and liquid nitrogen which are not used in relation to the final product. He also held that noticee had deliberately suppressed the fact by not making a correct declaration as to the use of the inputs.

6. From the foregoing, it would be seen that the petition involves the question whether or not there was suppression of facts justifying invoking of extended limitation of 5 years for raising demand under proviso to Rule 57-I which would involve enquiry into complicated facts which could not ordinarily before in a writ petition under Article 226 of the Constitution of India. It is well settled that in absence of any exceptional circumstances like complete lack of jurisdiction, total lack of competence of the statutory authority to grant relief, fundamental rights having been infringed which are all lacking in this case, a petition under Article 226 of the Constitution of India would not be maintainable without exhausting the statutory remedy merely because the statutory remedy is onerous. Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, relied on.] The decision cited by Shri Neema set out above would support the view taken by us.

7. As a result admission of petition is declined. It is, however, ordered that if the petitioner presents an appeal before CEGAT, New Delhi by 15-1-1992 the same shall be disposed of in accordance with law. Further the stay order dated 13-7-1991 granted by this court will remain in force till 15-1-92 by which date the petitioner may also present a stay application to the CEGAT, New Delhi and get further orders from the same.

8. Subject as aforesaid, the petition is dismissed with no order as to costs.

