
(1993) 06 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 862/92

Madhumilan Syntex Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 173B
Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 226

Citation : (1993) 44 ECC 7 : (1993) 68 ELT 72

Hon'ble Judges : V.S. Kokje, J;M.W. Deo, J

Bench : Division Bench

Advocate : A.M. Mathur and S.H. Moyai, for the Appellant; B.G. Neema, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Kokje, J.—The petitioner No. 1 is a Company manufacturing spun yarn, an excisable item under the Central Excises and Salts Act, 1944 (hereafter referred to as "the Act"). The petitioner No. 2 is the Managing Director of the petitioner No. 1 Company. In this petition a show cause notice dated 1-5-1992 issued by the Assistant Collector, Central Excise, Ujjain is under challenge. Earlier a petition (Misc. Petition No. 512/90) was filed in this Court, which was disposed of on agreed terms.

2. Immediately after the aforesaid case was disposed of on 25-4-1992, on 1-5-1992 the Assistant Collector Excise, Ujjain issued the impugned show-cause notice. The observations made in Misc. Petition No. 512/90 were referred to in the show cause notice and petitioner were called upon to show cause as to why amendment to classification list No. 4 of 1987 with effect from 25-7-1991 should not be made and as to why assessment for the period 25-7-1991 to 29-2-1992 and from 1-3-1992 onwards should not be finalised at the revised rates.

3. In order to understand the full implications of the show cause notice, it is

necessary to reproduce paragraphs 5,6 and 7 thereof, which are as under :-

"Para 5 :-And whereas, the contention of the notice that the said yarn does not contain synthetic textile material does not appear to be correct as one of raw materials i.e. synthetic waste is a synthetic textile material. The yarn manufactured by the Noticee appear correctly leviable to duty under clause (b) of S.No. 14 of the Notification No. 53/91 supra. Further, the Notification No. 53/91-C.E., dated 1-3-1992 and an explanation was appended to clarify that :-

"For the purposes of S. No. 14 of the Table, the expression "Synthetic Textile material" shall include waste falling under Heading Nos. 54.01 or 55.03 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

Para 6 :- Therefore, it appears that yarn manufactured by the noticee contains synthetic textile material and thus S.No. 14(b) of the Notification No. 53/91-C.E., dated 25-7-1991 as further amended by Notification No. 23/92-C.E., dated 1-3-1992 is correctly applicable for levying effective rates of basic excise duty. Therefore, the said yarn manufactured by the noticee is correctly chargeable to BED @ Rs. 8/- per Kg. for the period 25-7-1991 to 29-2-1992 in terms of Notification No. 53/91 dated 25-7-91 and Rs. 12/- per kg. w.e.f. 1-3-1992 in terms of amending Notification No. 23/92-C.E., dated 1-3-1992.

Para 7:- Now, therefore, the noticee is hereby directed to show cause to the Assistant Collector, Central Excise:-

(a) as to why the amendments to the classification list No. 4/87 w.e.f. 25-7-1991 bearing Range Sr. No. 25/91 dated 26-8-1991 and w.e.f. 1-3-1992 bearing Range Sr. No. 61/92 dated 26-3-1992 should not be approved under Rule 173B of the Central Excise Rules, 1944, @ Rs. 8/- per kg and @ Rs. 12/- per kg BED respectively in terms of Sr. No. 14(b) of the Notification No. 53/91-C.E., dated 25-7-1991 as amended; and

(b) as to why assessments for the period 25-7-1991 to 29-2-1992 and from 1-3-1992 should not be finalised as per the rates mentioned above and the differential duty amounting to Rs. 90,52,238.25 (Basic Excise Duty), Rs. 9,05,224.16 (Special Excise Duties) and Rs. 13,57,836.41 (Additional Duty) plus Rs. 24,22,418.40 (Basic Excise Duties), Rs. 3,63,362.78 (Additional Duty) for the month of March, 1992 on yarn cleared during the above periods as per details in enclosed Annexure-A, should not be demanded and recovered from them u/s 11A of the Central Excises and Salt Act, 1944.

4. The petitioners have immediately rushed to this Court with this petition, which is filed on 12-5-1992 challenging the show cause notice itself. The complaint is that though this Court in Misc. Petition No. 512/90 directed the Assistant Collector to act independently and impartially without pre-occupied notions and on the basis of the material on record, he has not applied his mind independently and impartially and have issued in fact the final order under the garb of the show cause notice. It is alleged that in substance the show cause notice is nothing but

a final order issued in the form of show cause notice. It is alleged that the Asstt. Collector had already concluded that the modification of the classification list was necessary and taking it for granted, he has also proceeded to recover the duty, which is evident from Annex. A - to the show cause notice, which according to the petitioners is the final demand raised against them. It is also contended that proper and adequate opportunity has not been and would not be afforded to the petitioner to reply to the show cause notice as one month's time, which has to be given for replying to the show-cause notice as per the Government of India instructions vide circular dated 2-7-1978 has not been given and instead only 15 days' time has been given for reply. It is further alleged that the Asstt. Collector had made no provision in the schedule of hearing for recording of relevant evidence and this also amounts to denial of opportunity. It is also alleged that the Assistant Collector is biased against the petitioner and in support of this contention it is stated that despite the earlier pronouncements of the Tribunal in Collector of Central Excise v. Priyadarshini Spinning Mills Ltd. 1990 (50) E.L.T. 145 (Tribunal) again the show cause notice is issued on the ground that the material used by the petitioners is fibre. A Trade Notice No. 158/90 dated 19-11-1990 is also pressed into service in support of the contention that the department has accepted that waste is not fibre.

5. The respondents in their returns have refuted the allegations and have pleaded that the show-cause notice was clearly in terms of the order passed by this Court in M.P. No. 512/90. It was also contended that in the circumstances of this case, no interference is called for by this Court at the show-cause stage and the petition deserves to be dismissed on the short ground of being premature.

6. Having heard the learned Counsel and having perused the record, we find that the first hurdle to be cleared by the petitioner before we can go on merits of the main controversy is whether a case for interference at the stage of show-cause has been made out by the petitioner. Reliance was placed on the decision in Victory Glass Industries v. Collector of Central Excise 1990 (47) E.L.T. 540 (Karnataka) and a case decided by the Calcutta High Court in Raghunandan Jalan v. Collector of Central Excise, West Bangal 1981 (8) E.L.T. 476 (Cal.). In the Single Bench judgment of the Karnataka High Court in Victory Glass's case (supra) in para 40 of the judgment cases in support of interference at the show-cause notice stage on the ground that the notice being vague, without application of mind and arbitrary have been catalogued. The plea before the Court was that the show-cause notice was indicative of bias and pre-judging of the conclusion as to what would be inevitable and ultimate finding to be recorded by the Collector and, therefore, no useful purpose would be served by participating in the adjudicating proceedings. The learned Single Judge of the Karnataka High Court came to the conclusion that on the basis of facts it could be said that the Court can issue a writ to prevent unnecessary harassment in appropriate cases. Finally, the conclusion recorded by the learned Judge in para 42 is as under :-

"On a careful consideration of the pleadings, the arguments, and the decisions relied upon by the petitioners and on behalf of the respondent, I am of the opinion that this is a fit case to interfere at the stage of show cause notice. The petitioners have succeeded in making out a case that they should not be exposed to unnecessary harassment, and on the admitted facts on several items as demonstrated the proposed adjudication would be without jurisdiction."

7. It is clear that the aforesaid case was decided on its own facts and cannot be taken to be applicable to all cases generally. The proposition that this Court can interfere even at the show cause stage cannot be denied but whether a case for interference at the show cause stage has been made out or not has to be judged in the circumstances of the particular case and there cannot be any cut and dry formula universally applicable to all cases.

8. The other case relied upon by the petitioner is Raghunandan Jalan's case (supra). A Single Bench of the Calcutta High Court interfered at the stage of show cause. It was a case under the Foreign Exchange Regulations Act, 1947. The show cause notice itself stated "from the facts and circumstances of the case it is abundantly clear that five pieces of gold bars were illicitly imported into India from a foreign territory...". The Court observed that the language of show-cause notice clearly showed that there was nothing left for the enquiry officer to enquire in the Departmental Enquiry as the Customs Officer has already made up his mind that the five pieces of gold bars were illicitly imported into India from a foreign country. In these circumstances it was held that giving of hearing was idle formality and a mere farce. This case also therefore, turns on its own facts and cannot be said to be a case which could be generally applied in any circumstances.

9. This Court in Hindustan Electro Graphites Ltd. v. Union of India 1990 (50) E.L.T. 15 (M.P.), a case cited by the petitioners themselves on another point, has held, relying on Universal Cables Ltd. v. Union of India 1978 (2) E.L.T.(J 632 (M.P.) that if a show cause notice is shown to be without jurisdiction, this court may interfere in its jurisdiction under Article 226 of the Constitution of India. In Universal Cable's case (supra), this Court had relied on the decisions in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and N.B. Sanjana, Assistant Collector of Central Excise, Bombay and Others Vs. The Elphinstone Spinning and Weaving Mills Company Ltd., This Court, therefore, had observed in Universal Cables" case that it is now settled law that if a notice issued by the Tribunal or Authority threatening to initiate proceedings prejudicial to a person is in excess of jurisdiction, the Tribunal or authority can be prohibited from further proceeding in the matter under Article 226 of the Constitution to save unnecessary harassment of the person concerned.

10. We have, therefore, to see whether in the facts and circumstances of this case, the show cause notice can be interfered with on the basis of the well-

known and settled principles of law. A bare reading of the show cause notice would show that it has been issued on the basis of agreed conditions on which the Misc. Petition No. 512/90 was disposed of. In the order dated 25-4-1992 in M.P. No. 512/90 this Court had categorically declared that there shall be no dispute as classification of the petitioner's product till 24-7-1991 and no demand in that respect shall be made by the respondents against the petitioners. The present show cause notice concerned period from 25-7-1991 onwards. The said order itself permitted amended classification list dated 27-1-1981, 5-8-1991 and 3-3-1992 to be finalised in accordance with law after giving a show cause and proper opportunity of hearing and adducing evidence. The petitioners by the same order were barred from raising any plea as to limitation for any demand raised for the period 25-7-1991 onwards. It was also clarified that the revised classification shall take effect from 25-7-1991 or 1-3-1992, as the case may be, as per the finding of the adjudicating authority. The petitioners' apprehension that he may not get a fair hearing was allayed by observing that the authorities shall act in the manner which will create confidence in the petitioners. Not only this, the Court had also clarified that revision or amendment of the classification list, as per the normal procedure, would also be subject to appeal and other legal remedies provided by law. Not only this, a time bound direction was made that the classification list shall be finalised before 30-6-1992 and compliance shall be reported to this Court.

11. In the aforesaid circumstances, there was absolutely no reason for the petitioners to have rushed to this Court with another petition. Moreover, the show cause notice in para 5 only states that "contention of the notices that the said yarn does not contain synthetic textile material does not appear to be correct as one of the raw-materials i.e. synthetic waste is a synthetic textile material." In para 6 also what is stated is "therefore, it appears that the yarn manufactured by the noticee contains synthetic textile material ...". Such a show cause notice cannot be said to be a final order prejudging the controversy and demonstrating bias or prejudice of the Assistant Collector. We are, therefore, of the view that the show cause notice does not suffer from any bias or prejudice. It is not a case where the petitioners are being exposed to unnecessary harassment. There is, therefore, no case for interference at this stage with the impugned show cause notice.

12. The petitioners have also contended that change of classification list and demand cannot go together and they have to be independent actions. Reliance has been placed on the decision in the Hindustan Electro Graphites Ltd. case (supra) and Asia Tea Enterprises v. Asstt. Collector of Central Excise 1991 (52) E.L.T. 351 (Mad). It is contended that the demand made in the show cause notice itself vitiates the show cause notice. We would not go into this question simply because it is for the Authorities concerned to pronounce on it. In this case the show cause notice has been given on agreed terms on the basis of which order in M.P. No. 512/90 was passed. It would be in the fitness of things that the petitioners are allowed to raise the contention before the Excise Authorities in

response to the show-cause notice. We would, therefore, leave this point to be decided in the normal course by the hierarchy of the Authorities under the Act.

13. Another contention raised by the petitioners is that the classification list is approved and shall remain intact. We need not touch this point also because there is already a reference to the date up to which the classification list will remain in fact in the order passed by this Court in M.P. No. 512/90. If the petitioners so desire, they may make their submissions before the Central Excise Authorities. Our observations, one way or the other, would unnecessarily prejudice or embarrass the Excise Authorities. We would, therefore, refrain from making any observations on this point also.

14. In the result, the petition fails and is hereby dismissed with costs. The petitioners shall pay costs of this petition to the respondents. Costs quantified at Rs. 5000/-. In M.P. No. 512/90 a time bound direction to complete the adjudication before 30-6-1992 was made and compliance was directed to be reported to this Court. Obviously, this direction could not be complied with because on 14-5-1992 during the vacation this Court had stayed the proceedings before the Adjudicating Authorities. In M.P. No. 512/90 it was also observed that if for any reason further extension of time becomes necessary, this Court shall be approached by the Adjudicating Authorities for the purpose. In the situation in which we are now been placed, we do not feel it necessary to fix any time for compliance of adjudicating proceedings. We would only hope that the proceedings will now be completed within a reasonable time, the time limit earlier placed by this Court having become infructuous.