
(1996) 11 MAD CK 0008
In the Madras High Court

Case No : Writ Petition No's. 13572/92, 14761/92, 9844/93 and 11129/93

Madura Coats Ltd.

APPELLANT

Vs

Govt. of India

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Citation : (1997) 91 ELT 313

Hon'ble Judges : Shivraj V. Patil, J

Bench : Single Bench

Advocate : Shri S. Govind Swaminathan, for the Appellant; Shri K. Jayachandran, A.C.G.S.C., for the Respondent

Judgement

1. The petitioners in W.P. No. 13572/92 and 14761 of 1992 have sought for writ of certiorari to quash the Order No. 52/92 - C. No.

V/52/30/7/91, dated August, 1992 of the Assistant Collector of Central Excise, Madurai-I Division, and the Order No. 46/92, dated 25-8-1992

and No. 47/92, dated 27-8-1992 - C. No. V/52.06/3/74/89-Cell of the Assistant Collector of Central Excise, Tirunelveli respectively. The

petitioner in W.P. No. 13572/92 has filed W.P. No. 9844 of 1993 for writ of certiorari, to quash the Order No. VIII/48/4/91/6130, dated 29-3-

1993 of the first respondent, i.e., Assistant Collector of Customs & Anti-Smuggling, Tuticorin. The petitioner in W.P. No. 14761 of 1992 has filed

W.P. No. 11129 of 1993 challenging the order No. VIII/48/4/91-DBK, dated 1-6-1993 of the first respondent - Assistant Collector of Customs

& Anti-Smuggling, Tuticorin with a prayer to quash it.

2. In all these writ petitions, common questions of law arise for consideration of similar facts. Hence they are being disposed of by this common

order.

3. In my view it would be enough to briefly state the facts of the case in one writ petition and the case as pleaded by the respondent in the counter affidavit.

4. It is stated that the petitioner company is one of the leading and largest textile company in India employing about 20,000 persons with a current

annual turnover of Rs. 500 crores. The goods record of the petitioner company in terms of durability and quality of textile fabrics manufactured by

it has created good overseas market in the foreign countries. For decades it has maintained the consistent record as the leading Exporter of textiles.

5. The cotton canvass and Duck fabrics were initially classified and cleared under the Tariff Item 19-I(i) of the erstwhile First Schedule to the

Central Excises and Salt Act, 1944. After the Central Excise Tariff Act, 1985 (hereinafter referred to as "the Act") came into force from 28-2-

1986, the petitioner filed classification lists classifying the cotton canvass/duck fabrics under the Chapter Headings 52.05/52.06 which were

corresponding to Tariff Item 19-I(i), and the same were approved by the Assistant Collector of Central Excise, the third respondent and the

petitioner was clearing the cotton canvass and duck fabrics under the Chapter Headings 52.05 and 52.06 of the Act as approved by the Assistant

Collector of Central Excise.

6. In order to meet the revised annual target collection of excise duty fixed by the Central Board of Excise, giving their own interpretations and

reasons contrary to the provisions of the Central Excises and Salt Act, 1944, and the Act, the officers issued show cause notices proposing

reclassification of the various varieties of fabrics manufactured by the petitioner company in total disregard of all other relevant considerations. In

order to coerce the petitioner company, the Directors and Officers have been prosecuted before the Criminal Court so that they could accept the

proposed reclassifications, invoking the proviso to Section 11A of the Central Excises and Salt Act, 1944. The higher incidence of duty made the

fabrics of the petitioner company costlier in the market when the same products manufactured by other manufacturers at other places are sold for

lesser price. The petitioner company left with no other alternative, was forced to file these petitions.

7. In the writ petitions, it is contended that the reasoning of the Assistant Collector of Central Excise in ordering reclassification is contrary to the

provisions of the Act and the Statutory instructions of the Government of India, and discriminates the petitioner; with the introductions of the Act,

the cotton canvass/duck fabrics were classified under the Headings 52.05 and 52.06; the classification lists filed by the petitioner were approved

during the years 1986 to 1990 by the competent authority. In the affidavit filed in support of the writ petition, the petitioner has given facts leading

to the writ petition and the provisions of law in great details. I do not think it necessary to narrate the facts in detail in the view I am proposing to

take in the light of the submissions made by the learned Counsel for the parties.

8. The respondents have filed counter affidavit in W.P. No. 13572 of 1992, opposing the claim of the petitioner, and held W.M.P. No. 26591 of

1992 in W.P. No. 14761 of 1992, and W.M.P. No. 21369 of 1993 in W.P. No. 9844 of 1993 for vacating the interim stay.

9. As can be seen from the counter affidavit filed and the affidavits filed in support of the petitions for vacating the interim stay, the respondents

have given the details, opposing the claim of the petitioner, and have sought for dismissal of the writ petition. Besides denying the claim of the

petitioners, the respondents have taken a stand that the petitioners have an alternative remedy of filing appeal against the impugned orders, and

without exhausting the alternative remedy the petitioners have approached this Court and hence the writ petitions may not be entertained. It is

further stated that the classification issue being a pure question of fact this Court need not go into the facts which has to be done by the authorities,

and the Courts have taken the view that in the classification matters the Court should not interfere since it involves pure question of fact.

10. Shri S. Govind Swaminathan, learned Senior Counsel for the petitioners submitted that the Central Board of Excise and Customs has issued

Order No. 10/93, dated 5-11-1993 u/s 37B, clearly stating that grey cotton canvass, cotton duck, cotton tyre cord fabrics and cotton belting

fabrics shall henceforth be classified under the Heading No. 52.06 of the C.E.T.; Based on the said order the Collector of Central Excise, Madurai

has issued Trade Notice No. 42/93 dated 21-12-1993 stating that in exercise of the powers conferred u/s 37B of the Central Excises and Salt

Act, 1944, the Central Board of Excise and Customs has ordered that grey cotton canvass, cotton ducks, cotton tyre cord fabrics and cotton

belting fabrics shall henceforth be classified under the Heading 52.05 of the Central Excise Tariff; in view of this clear legal position, as can be seen

from the said order and Trade Notice, the impugned orders in W.P. Nos. 13572/92 and 14761/92 cannot be sustained. The relief sought for in

W.P. Nos. 9844/93 and 11129/93 are consequential and they depend upon the orders to be passed in W.P. Nos. 13572/92 and 14761/92.

11. Shri K. Jayachandran, learned Additional Central Government Standing Counsel representing the respondent argued in support and

justification of the impugned orders in the light of the stand taken in the counter affidavit. He submitted that in a similar case the Division Bench of

this Court in the case of the very petitioner Madura Coats Ltd. Vs. CCE, Madurai, , setting aside the common order passed by a learned Single

Judge in W.P. No. 7793 and 7988 of 1993, has held that interference in such a matter in exercise of jurisdiction under Article 226, overlooking

the provisions regarding appeal, is not at all warranted and it would be opposed to the very scheme and policy of the law. The Division Bench of

this Court further directed that if the appellant files appeals within 30 days in accordance with the provisions contained in the Act, the appellate

authority shall decide such appeal on merits and in accordance with law without going into the question of limitation. He also made few more

submissions in support of the impugned orders. I do not think it necessary to refer to them in the view I am proposing to take.

12. I have considered the submissions made by the learned Counsel for the parties.

13. It was not disputed before me that the petitioners have alternative remedy of appeal provided by the Statute so as to challenge these very

impugned orders. Paragraphs 8 and 9 of the Division Bench Judgment aforementioned in Madura Coats Ltd. Vs. CCE, Madurai, read :-

8. As against the adjudication made u/s 11A of the Act, there is a right of appeal provided under Sections 35 and 35B of the Act. If the order is

passed by the Assistant Collector of Central Excise, the appeal would lie to the Collector (Appeals) u/s 35 of the Act and if the order is passed by

the Collector of Central Excise, the appeal would lie to the Appellate Tribunal u/s 35B of the Act. The scope of appeals under both the provisions

is the same, as both of them lie on facts and law. It may also be pointed out here that as against the order passed by the Appellate Tribunal, appeal

lies to the Supreme Court under certain circumstances and no appeal is provided to the High Court. If it is necessary, the Tribunal can make a

reference on a question of law to the High Court u/s 35G. Further, along with the appeal, as per Section 35F of the Act, the appellant is required

to deposit the duty as well as penalty. If the deposit of duty and penalty is going to cause undue hardship to the appellant, it is open to the

Collector (Appeals) or the Appellate Tribunal to consider such question and decide whether in the facts and circumstances of each case,

depositing of duty and penalty causes undue hardship to the appellant. The provisions u/s 35F of the Act are made with a view to safeguard the

interest of revenue. Therefore, what is stated above makes it clear that the matters falling u/s 11A and other provisions of the Act relating to

adjudication of the excise duty and penalty payable by a particular party, no jurisdiction is conferred upon the High Court to deal such matters. The

aggrieved party will have to invoke the appellate jurisdiction, i.e. the Collector (Appeals) or the Appellate Tribunal, as the case may be and if

aggrieved by the orders passed in the appeals, they can approach the Supreme Court, in case it is an order by the Appellate Tribunal, whereas if it

is an order passed by the Collector (Appeals), further appeal is provided to the Appellate Tribunal. Even against that order also, the remedy is by

way of appeal to the Supreme Court in certain circumstances or reference by the Appellate Tribunal to the High Court on a question of law. Such

being the scheme of the Act, interference in exercise of jurisdiction under Article 226 of the Constitution overlooking the provisions regarding

appeal, is not at all warranted and it would be opposed to the very scheme and policy of the law.

9. Even in the case of A. V. Venkateswaran (supra), the Supreme Court has made it clear that existence of an alternative remedy is a bar to the

entertainment of a petition under Article 226 of the Constitution unless there is complete lack of jurisdiction in the officer or authority to take the

action impugned, or where the order prejudicial to the writ petitioner has been passed in violation of the principal of natural justice and could,

therefore be treated, as void or non-est and that in all other cases, courts should not entertain petitions under Article 226. In L. Hirday Narain's

case (supra), it has been held that in a case where the remedy that is available is only a revision, it is well settled that revision is not an adequate

remedy and therefore, even though an alternative remedy of revision is available, the High Court can exercise jurisdiction under Article 226 of the

Constitution, subject to the facts of each case. In *Madura Coats Ltd.*'s case 1994 (71) E.L.T. 347 in which the order of the Collector was

challenged before the Supreme Court, it was held that there was no reason as to why the petitioner should not avail the alternative remedy of

appeal available to it. The situation of the case that was decided by the Supreme Court and the case which we are now called upon to decide is

the same. In addition to this, a Division Bench of this Court in *Indian Steel Rolling Mills Ltd. Vs. Union of India*, has held as follows :-

"When the appeal lies on facts and law and the Appellate Authority is also entitled to take into account the subsequent events that take place

during the pendency of or subsequent to the order challenged in the appeal, we are of the view that the alternative remedy of appeal cannot at all

be considered to be either inadequate or inefficacious. In fact, the Appellate Tribunal has been specifically created in order to ensure that such

matters are specifically dealt with and there is speedy and effective disposal of such matters, therefore it would be in the interest of the appellant to

avail the remedy of appeals".

In *Collector of Customs, Madras Vs. Madras Electro Castings P. Ltd.*, a Division Bench of this Court has also taken the same view. The decision

in the case of *"Swasthi Rubber Products"* 1995 (59) ECR 31 (supra), does not deal with the question of alternative remedy. Therefore, we do not

consider it necessary to refer to it in detail.

In view of the Judgment of the Division Bench aforementioned, I have no hesitation to hold that the petitioners having alternative remedy of filing

appeals, these writ petitions are liable to be dismissed, leaving it open to the petitioners to avail such remedy.

14. Shri S. Govind Swaminathan, learned Senior Counsel for the petitioners urged that the writ petitions having been admitted in 1992 and the

petitioners having the benefit of interim orders, at this stage, they may not be driven to avail the alternative remedy. Since the petitioners will have

the opportunity of filing appeals in the view I am taking, and that they had the

benefit of interim orders, I do not think that any serious prejudice will be caused to them if they have to avail the alternative remedy of appeals.

15. The learned Counsel for the respondents submitted that in the order dated 5-11-1993 and the Trade Notice dated 21-12-1993

aforementioned, it is clearly stated that they shall not change the position for the past closed assessments, and as such it is not open to the

petitioners to urge regarding classification made prior to 5th November, 1993. The learned Senior Counsel for the petitioners submitted that since

the orders are challenged in the writ petitions, and the writ petitions are pending, it cannot be said that the assessments were closed. He also

submitted that the order issued by the Central Board of Excise and Customs is binding on the Respondent No. 3. In support of this submission he

cited a Judgment of the Supreme Court in M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, . It is needless to state that the

Judgment of the Apex Court is binding on all the Courts, Tribunals and authorities. It is open to the petitioners to rely on this Judgment before the

appellate authority to contend that the order dated 5-11-1993 issued by the Central Board of Excise and Customs is binding on the appellate

authorities of the Tribunal as the case may be. As and when decisions of the Apex Court are cited, it is needless to state, the appellate authorities

or Tribunals, as the case may be, are bound to follow them.

16. Since I have taken the view, following the Division Bench Judgment of this Court aforementioned that the petitioners have to avail alternative

remedy of appeals, I do not think it necessary to consider on merits, all the other contentions raised by the parties in these writ petitions.

17. In the result, for the reasons stated, I pass the following order :-

18. The writ petitions are dismissed. I further direct that if the petitioners file appeals before the appellate authorities against the impugned orders

within a period of 30 days from today, the appellate authorities shall decide such appeals on merits and in accordance with law, without going to

the question of limitation. All the contentions of the parties are left open to be urged before the appellate authorities.