(2012) 09 BOM CK 0203

In the Bombay High Court

Case No : Writ Petition No. 1088 of 1996

Maharashtra Insecticides Ltd. APPELLANT

Vs

Chairman, C.B.E. and C. RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2(f), 37(B)

Citation : (2012) 285 ELT 498

Hon'ble Judges : B.P. Dharmadhikari, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : Nitin W. Sambre, for the Appellant; S.K. Mishra, ASGI, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Matter is called out again. Shri Nitin W. Sambre, learned Advocate, appears on behalf of petitioner and Shri S.K. Mishra, learned Assistant Solicitor General of India, appears for respondents. Shri Sambre, learned Advocate for petitioner, states that controversy is covered by the orders of Division Bench of this Court in Special Civil Application Nos. 9034, 8580, 8730, 9035 and 9036 of 1995 decided on 15-4-1996. This view is followed by learned Single Judge of Delhi High Court in judgment in the case of Kissan Chemicals Vs. Union of India, .

2. After hearing learned Counsel, we find that earlier definition of "manufacture" in Section 2(f) of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act") was looked into in the light of Judgment of Hon''ble Apex Court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, as also of this High Court in the case of Sandoz India Limited Vs. Union of India and others, and Tribunal thereafter concluded that processing of concentrated basic pesticidal chemical in question carried out by respondents through addition of inert carriers and solvents and dispersing and stabilizing agents resulted only in their dilution rendering them suitable for use.

The process, therefore, was held not constituting manufacture. This decision attained finality.

3. The Board thereafter issued impugned notification dated 27th July, 1995 in exercise of powers u/s 37(B) of the Act and because of provision made therein, the show-cause notice impugned in present writ petition has been issued to petitioner.

4. Shri N.W. Sambre, learned Advocate for petitioner, submits that the concept of manufacture as recognized in the Act could not have been amended by Board through such notification and as that concept has not undergone any change, the adjudication by Tribunal still holds field show-cause notice issued only because of notification, is therefore arbitrary and liable to be quashed and set aside.

5. Shri S.K. Mishra, learned Assistant Solicitor General of India, wants to rely upon several judgments to urge that interference by writ Court at show-cause notice stage is not desirable. According to him, it is open to petitioner to raise all these contentions in reply to show-cause notice and Department then can consider his grievance including the law as laid down by Hon''ble Apex Court or by other Courts.

6. The facts are not in dispute. An activity undertaken by petitioner is already held to be not constituting manufacture by a competent Tribunal and that adjudication has attained finality, effort by department is to show that it becomes manufacturing activity because of notification dated 27th July, 1995. The Bombay High Court as also Delhi High Court found such an attempt unsustainable. The reasons are already recorded by this Court and Delhi High Court in the process. It is obvious that a statutory definition as contained in Section 2(f) of the Act has interpreted by a competent Tribunal could not have been modified by Board by issuing such notification. The notification dated 27th July, 1995 is therefore found unsustainable and set aside by Delhi High Court by placing reliance upon the judgments of Division Bench of this Court mentioned supra.

7. In view of this position, it is apparent that though learned Assistant Solicitor General of India is right in submitting that this Court should not interfere at show-cause notice stage, in present facts, issuance of such show-cause notice in the light of Circular, which is not holding field, is unsustainable.

8. In this situation, we quash and set aside the circular dated 27th July 1995 at Annexure ''A'' to the petition and show-cause notice dated 15th September, 1995.

9. However, it is made clear that if respondents have got any other grievance in relation to manufacturing activity undertaken by petitioner, they are free to take necessary action in accordance with law. Petition is allowed. Rule is made absolute in aforesaid terms. No costs.