

(2002) 02 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application No. 10588 of 2001 and S.C.A No. 10590 of 2001

Mangal Textile Mills Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3A

Citation : (2002) 81 ECC 47 : (2004) 171 ELT 160

Hon'ble Judges : D.M. Dharmadhikari, C.J;D.A. Mehta, J

Bench : Division Bench

Advocate : Kamal B. Trivedi and Paresh M. Dave, for the Appellant; D.N. Patel, for the Respondent

Judgement

D.A. Mehta, J.—Rule. Mr. D.N. Patel, learned standing Counsel appears for the respondents and waives service of Rule. With the consent of the learned Counsel, the petitions are heard finally today.

2. In both these petitions the petitioners have challenged the stand of the excise department as regards operation of the compounded levy scheme which pertains to levy and collection of Central Excise based on capacity to manufacture as applicable for the period commencing from 1-5-2001 to 31-3-2002. It is a common ground between the parties that the issues are identical and except for the figures, there is no difference in relation to the facts in the two petitions. Hence, for the sake of convenience, we shall refer to only the facts as narrated in SCA No. 10588 of 2001.

3. The compounded levy scheme was introduced by Notification No. 16/01-C.E. (N.T.) ,dated 30-4-2001. The petitioner company filed an application in the prescribed form and contended that the investment in plant and machinery was to the extent of Rs. 2,87,98,314/- which was below the ceiling of Rs. 3 crores prescribed under the relevant rules. The said application was accompanied by the certificate issued by the Chartered Accountant as prescribed under the rules. The

said certificate shows the value of the investment in plant and machinery installed in the factory of the petitioner at Rs. 2,64,56,076/-. Furthermore, in the said certificate, it is specifically stated that the said value has been arrived at as per the accounting standards (A.S. 10) issued by the Institute of Chartered Accountants of India.

4. The respondents issued a show cause notice dated 27-6-2001 stating that the value of plant and machinery installed in the factory premises came to Rs. 3,09,63,727/-. This value was arrived at on the basis of the verification carried out by the Deputy Commissioner by visiting the factory premises and taking into consideration the balance sheet as well as various invoices etc. Pursuant to the show cause notice, a personal hearing was also granted. The petitioners responded not only through the written submissions but also appeared personally through its Director accompanied by the Chartered Accountant and contended that the value as adopted by the Deputy Commissioner was not correct and the certificate issued by the Chartered Accountant should be accepted. However, the respondent Commissioner by his order dated 16-10-2001 (Annexure - "H"), came to the conclusion that the petitioner was not entitled to the benefit under the compounded levy scheme in view of the fact that the value of investment exceeded the limit of Rs. 3 crores as specified in the rules. The respondents, for this purpose, relied upon Notification No. 32/2001-C.E., dated 28-6-2001 as modified by Notification No. 41/2001-C.E., dated 21-9-2001. According to the respondents, as stated in the affidavit-in-reply, the petitioner was granted an opportunity of meeting with the amended parameters as prescribed by the subsequent notification, dated 21-9-2001 and the petitioner had already availed of the opportunity.

6. Mr. Trivedi, learned standing Counsel appearing on behalf of the petitioners contended that the petitioner had made an application at the point of time when notification, dated 21-9-2001 was not in existence and that the petitioner's case should not be governed by the said notification. That the petitioner had made the application as per the existing notification and the case of the petitioner should be tested as per the provisions of the scheme as applicable at the point of time when the application was made. In support of this submission, our attention was invited to the further notification issued on 13-11-2001 to contend that the idea was that the case should be governed and tested by the prevailing rules and the procedure as on the date of the application and subsequent amendments by way of notifications should not be taken into consideration.

7. Mr. D.N. Patel, learned standing Counsel appearing on behalf of the respondents contended that the respondents had given full and proper opportunity of hearing to the petitioner to substantiate its case, but the petitioner had not been able to controvert the figures as computed by the Deputy Commissioner showing the value of the investment in plant and machinery and the said figures arrived at by the Deputy Commissioner were based on the balance sheet of the petitioner and the petitioner should not be heard to make

the grievance at this stage. It is also contended that the alternative remedy by way of appeal was also available and this Court should not interfere at this stage but relegate the petitioner to avail the alternative statutory remedy.

8. Mr. Trivedi, in rejoinder, contended that the petitioner would have availed of the alternative remedy by way of appeal but for the fact that the scheme was expiring on 31-3-2002 and the appeal would not be decided before that date, thus rendering the alternative remedy ineffectual.

9. We find that these petitions require to be allowed on limited count, without entering into any disputed questions of fact. There is no dispute as to the fact that the certificate produced by the petitioner of its Chartered Accountant was not disputed by the respondents by bringing on record any opinion of another qualified person so as to displace the opinion of the professional expert. In fact, the petitioner supported the Certificate of the Chartered Accountant by a further letter tendered after Notification No. 41/2001, dated 21-9-2001 wherein the Chartered Accountant had specifically stated that they had followed the contents of the Accounting Standards (A.S. 10) while issuing the original certificate. Once this statement of qualified Chartered Accountant has come on record, even on application of the subsequent notification dated 21-9-2001, the case of the petitioner stands proved by the relevant rules of the scheme inasmuch as the total value of the investment in plant and machinery does not exceed the specified limit of Rs. 3 crores. The opinion rendered by the competent expert has not been dislodged by the respondents in any manner whatsoever and the opinion expressed by the Deputy Commissioner would remain merely an opinion in the face of the certificate issued by an expert.

10. In these circumstances, without entering into the larger controversy as to whether the subsequent notification would govern the case of the petitioner or not, even on assumption that the said notification would be applicable to the case of the petitioner, as the facts go to show that the petitioner has fulfilled the requisite conditions as prescribed under the rules of the scheme on the basis of the original as well as subsequent notification and hence, these petitions are allowed. We hereby quash and set aside the order at Annexure "H" dated 16-10-2001 in SCA No. 10558 of 2001 and the order at Annexure "I", dated 25-10-2001 in SCA No. 10590 of 2001. We further direct the respondents to levy and collect the duty as per the terms of compounded levy scheme for the period from 1-5-2001 to 31-3-2002. Rule is made absolute in each of the petitions with no order as to costs. Direct service is permitted.