(1994) 10 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 14509 of 1992

Metal Powder Company Ltd. APPELLANT

Vs

Collector of C. Excise, Madurai RESPONDENT

Date of Decision : 31-10-1994

Acts Referred:
Central Excise Rules, 1944 — Rule 173B

Citation : (1995) 75 ELT 51

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Shri R. Thiagarajan, for the Appellant; Shri P. Venkatasubramaniam, Addl. C.G.S.C., for the Respondent

Judgement

Raju, J.

1. Even when the Writ Miscellaneous Petitions came up before this Court having regard to the nature of the relief sought for and the stage of the proceedings before the authorities below, I considered it appropriate to dispose of the main writ petitions themselves. Learned counsel on either side had no objection to the said course. Consequently, the said main writ petitions themselves are taken up for hearing.

2. These writ petitions relate to one and the same subject matter though raising overlapping issues and pertaining to different stage of the proceedings. Hence they are dealt with together.

3. Having regard to the stage of the proceedings before the authorities below, I consider it inappropriate to refer to the various claims on the merits of the main dispute itself. Suffice it to notice that the dispute centers round a conflicting claim as to whether the commodity in question is zinc dust or zinc powder for applying the proper rate of duty under the Central Excise Act. It appears that earlier a show cause notice has been issued for the period between 1-1-1992 and 30-6-1992 and this was the subject matter of W.P. No. 14509 of 1992. Though

that writ petition was admitted, no interim order as such was granted. Subsequently, it appears, another notice came to be issued on 8-12-1992 calling upon the petitioner to show cause why the produce manufactured by the petitioner should not be treated as also powder under tariff sub-heading 7903.90 and not as zinc dust under sub-heading No. 7903.10 and why the differential rate should not be recovered from the petitioner for the period between 1-7-1992 and 30-11-1992. The petitioner was also called upon to show cause to the said proposals within thirty days from the date of receipt of the notice intimation also whether a personal hearing is also desired. Challenging the said proceedings, W.P. No. 28 of 1993 has been file praying for a writ of certiorari to quash the said proceedings. While admitting that writ petition, this Court on 5-1-1993 in W.M.P. No. 53 of 1993 granted interim stay.

4. While matters stood thus, on 31-12-1992, the Asstt. Collector of Central Excise, Madurai I Division, has passed final orders in the matter classifying the product manufactured by the petitioner as zinc powder assessable to duty under the Heading 7903.90 of the Central Excise Tariff Act, 1985, and that the petitioner was not eligible to avail the benefit under Notification No. 184/88 dated 13-5-1988 in respect of their product with a consequential direction to file a classification list for the product manufactured by them as zinc powder as per Rule 173B of the Central Excise Rules, 1944. A demand was also ordered for a sum of Rs. 39,92,694.60 said to be the duty in respect of the goods manufactured and cleared during the period between January, 1992 and November, 1992. Aggrieved against the said proceedings of the Asstt. Collector of Central Excise, Madurai I Division, W.P. No. 1785 of 1993 has been filed seeking for a writ of certiorari to quash the same. Apart from the contentions raised on the merits, the plea on behalf of the petitioner in this writ petition is that in the light of what has been stated supra, there could be no scope for the Assistant Collector to have passed a final order in the matter.

5. Consequent upon the passing of the orders dated 31-12-1992 by the Assistant Collector of Central Excise, Madurai I Division, the Superintendent of Central Excise, Thirumangalam Range appears to have issued a notice dated 6-1-1993 to return the L. 6 licence and Consolidated Registration Certificate No. 1/92 while rejecting the request for a registration certificate for deleting the entry relating to the classification of the goods in question. The Challenging the said communication, W.P. No. 1786 of 1993 has been filed for a writ of certiorari to quash the said proceedings. The result of the writ petition would inevitably depend upon the existence or otherwise of the order passed by the Asstt. Collector of Central Excise, Madurai I Division dated 31-12-1992 even as per the contents disclosed in the communication dated 6-1-1993.

6. Heard Mr. R. Thiagarajan, learned Senior Counsel for the writ petitioner and Mr. P. Venkatasubramaniam, learned Addl. Central Govt. Standing Counsel for the respondents.

7. The learned Senior Counsel for the petitioner contended that in view of the

pendency of W.P. No. 14509 of 1992 for the period relating to 1-1-1992 to 30-6-1992 and the other writ petition viz., W.P. No. 28 of 1993 relating to the period 1-7-1992 to 30-11-1992 wherein interim order of stay has also been granted, the Assistant Collector could not have ultimately passed the order as he has purported to do on 31-12-1992 adjudicating on the merits. That apart, it is pointed out by the learned Senior Counsel that though initially when the order was passed on 31-12-1992 it was stated therein that the authorised representative of the petitioner appeared and made representations on behalf of the petitioner, as informed by the Assistant Collector in his communication dated 28-1-1993, on the petitioner writing to the Assistant Collector informing him that the consultant did not appear on 22-12-1992 and that no authorisation was ever given to such a consultant, the Assistant Collector himself by his reply dated 30-3-1993 informed the petitioner that the intimation made in the communication dated 28-1-1992 about the consultant appearing and making representation on behalf of the petitioner was by oversight. Finally, the learned Senior Counsel also contended that even as per the notice dated 8-12-1992 the petitioner had thirty days'' time to file objections to the said show cause notice and thought the same came to be served long thereafter on 11-12-1992, as a consequence of which the petitioner had time to submit its explanation till 10-1-1993, the Asstt. Collector has passed final orders on 31-12-1992 itself even prior to the date of the permissible period granted for filing objections or explanation. For all the reasons, according to the learned Senior Counsel, the impugned orders are liable to be set aside even do here any consideration on the merits of the claims also.

8. The learned Addl. Central Govt. Standing Counsel who appeared for the respondents cannot in the teeth of the staring facts which are against the respondents and which go to substantiate the infirmity pointed out in the procedure adopted by the Asstt. Collector, seriously dispute the position that the final order dated 31-12-1992 has to be set aside.

9. I have carefully considered the submission of the learned counsel appearing on either side. So far as W.P. No. 14509 of 1992 is concerned, no doubt, this Court did not grant any orders of stay though the writ petition has been admitted. So far as W.P. No. 28 of 1993 is concerned while admitting the writ petition interim stay was granted on 5-1-1993 in W.M.P. No. 53 of 1993. At any rate, in view of this, no final orders could have been passed in the matter pursuant to the show cause notice dated 8-12-1992 for the period covered therein. Even going by the very date of notice dt. 8-12-1992, which was stated to have been served on the petitioner only on 11-12-1992, the Asstt. Collector could not have passed final orders as he has done on 31-12-1992 even before the expiry of thirty days from the date of issue of the notice or its service on the petitioner. The other infirmity about the passing of such an order without even hearing the petitioner or his representative also stands fortified by the communication dt. 30-3-1993 of the Asstt. Collector. For all these reasons alone the impugned proceedings dt. 31-12-1992 passed by the Asstt. Collector of

Central Excise, Madurai I Division is liable to be set aside on the ground of violation of principles of natural justice and denial of a fair and effective opportunity to the petitioner. In view of the above, without going into any of the other claims of the petitioner about the legality and propriety of the claim pertaining to the classification of the commodity in question, the order passed on 31-12-1992 by the Asstt. Collector of Central Excise, Madurai I Division, shall stand and is hereby quashed. W.P. No. 1785 of 1993, therefore, shall stand allowed.

10. So far as W.P. No. 1786 of 1993 is concerned, the Superintendent, Central Excise, Thirumangalam Range, has chosen to take action as he has purported to have done only as a consequence and also basing his action on the orders of the Asstt. Collector of Central Excise, Madurai I Division, dated 31-12-1992. Since this Court has quashed the said order, it is but necessary that the proceeding of the 3rd respondent/Superintendent, Central Excise, Thirumangalam Range, dated 6-1-1993 also shall stand hereby quashed and W.P. No. 1786 of 1993 shall stand allowed.

11. So far as W.P. Nos. 14509 of 1992 and 28 of 1993 are concerned, though there was no stay in the first of the writ petitions and there was a stay in the latter writ petition only pertaining to the period 1-7-1992 to 30-11-1992, having regard to the fact that the Assistant Collector has passed a combined order for both the periods and in as much as the issue involved is one and the same, it is but just and necessary that the entire proceedings dated 31-12-1992 has to be quashed and has been quashed in this order. In view of the above, no further orders need be passed in these two writ petitions on the merits of the claim. Those writ petitions have been filed challenging the proposals contained in the notice issued by the Assistant Collector proposing reclassification or proper classification of the commodity with a consequent demand for the differential duty in respect of the clearance of the commodities already effected for the relevant periods. Having regard to the fact that I am going to direct the Asstt. Collector to decide the matter on merits afresh even at the stage of show cause notice this Court is not obliged to allow the petitioner to by-pass an effective determination of the issue by the competent authority initially.

12. Consequently, while quashing the order dated 31-12-1992 of the Asstt. Collector of Central Excise, Madurai I Division in its entirety and also the consequential order dated 6-1-1993 of the Superintendent, Central Excise, Thirumangalam Range by allowing W.P. Nos. 1785 and 1786 of 1993, I direct the 2nd Respondent/Asstt. Collector of Central Excise, Madurai I Division, to restore the proceedings, which are the subject matter of the notices dated 13-8-1992 and 8-12-1992, and issue a fresh notice of hearing giving sufficient time also to the petitioner to submit their objections and thereafter give a hearing if so desired by the petitioner in accordance with law and decide the matter on merit objectively and in accordance with law uninfluenced by the earlier proceedings which have been hereby quashed. In the light of the above, W.P. Nos. 14509 of

1992 and 28 of 1993 are dismissed as calling for no separate orders in view of the orders passed in the other writ petitions and directions issued pertaining thereto. No costs.

