(1995) 01 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No. 78/86

Mimani Wires (Pvt.) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 05-01-1995

Acts Referred:

Central Excise Rules, 1944 — Rule 9B
Constitution of India, 1950 — Article 216

Citation : (1995) ECR 215 : (1995) 77 ELT 66

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : Rashmi Pandit, for the Appellant; B.G. Neema, for the Respondent

Judgement

A.R. Tiwari, J.—This is a petition under Article 216 of the Constitution of India.

2. Facts are jejune. The petitioner is a company registered under the Companies Act, 1956. It is having its registered office located at 26/3, New Palasia, Indore and it''s factory is situate at Pithampur. The petitioner manufactures among other products, winding wires and cables falling under Item No. 33B of the First Schedule of the Central Excises & Salt Act, 1944. By Notification dated 1-3-1984, the Central Government exempted electric wires and cables of specified description (Annexure A). The petitioner, therefore, became liable to pay duty only at the rate of 5% instead of 10% on the raw materials purchased by it. The classification list was provisionally approved under Rule 9B of the Central Excise Rules, 1944. The Assistant Collector, however, noticed on 2-6-1984 that the petitioner was liable to pay at the rate of 10% instead of 5% in conformity with Notification dated 1-3-1984 (Annex.C). The petitioner opposed the demand (Annex. D). After hearing the Asstt. Collector took the decision that the petitioner was liable to pay the duty as indicated on the linchpin that the manufacturers from whom he purchased the copper wire rods had not paid the duty on the name. The copy of the order is marked as Annexure F. The petitioner then preferred an appeal before the Collector. That appeal was dismissed on

7-11-1985 (Annex. F). The respondents, thereafter passed the adverse order Annexure G. These orders (Annex. E, F and G) are challenged in this writ petition.

3. The respondents have filed their return in oppugnation.

4. I have heard both the sides.

5. The counsel for the petitioner has placed on record the Notification (Cen-Cus Central Excise Manual, 1990-91. P.III 199) to contend that the duty is exempted on the material in question and as such the petitioner is not liable to pay any duty. The counsel, therefore, prayed for appropriate order in favour of the petitioner.

6. The counsel for the respondent on the other hand submitted that the aforesaid notification was not considered by the appropriate authority and as such the merits of the matter be left untouched and the case be remanded to the authorities for consideration of the question in conformity with the aforesaid notification on which reliance is placed by the petitioner.

7. The aforesaid statement satisfies the counsel for the petitioner.

8. Subsequent event is required to be taken into account to do complete justice between the parties. In Pasupuleti Venkateswarlu Vs. The Motor and General Traders, , it is held as under:-

"For making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

9. In view of the aforesaid position, I dispose of the petition with direction as under :-

(a) The aforesaid order Annexure E, F & G are hereby quashed.

(b) Liberty is granted to the appropriate authority to consider the question of levy and collection of the duty from the petitioner in conformity with the aforesaid notification and pass appropriate order within a period of four months from today in accordance with law under intimation to the petitioner.

10. With the aforesaid direction, this petition stands finally disposed of with no order as to costs. Security amount, if any, shall be refunded to the petitioner after verification.