
(1984) 04 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. Nil of 1983

Modi Spinning and Wvg. Mills Company Ltd.

APPELLANT

Vs

Assistant Collector of Central Excise

RESPONDENT

Date of Decision : 11-04-1984

Acts Referred:

Central Excises and Salt Act, 1944 — Section 23, 23(3), 24
Constitution of India, 1950 — Article 226

Citation : (1984) 17 ELT 1

Hon'ble Judges : V.N. Khare, J;M.P. Mehrotra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This petition under Article 226 of the Constitution of India seeks to question the validity or the order dated 8-3-1984, passed by the Assistant Collector, Central Excise, Ghaziabad. A true copy of the said order is annexure 4 to the petition. The controversy is regarding the classification list of the petitioner dated 18-4-1983 in respect of celiulosic spun yarn. In the impugned order there is a passage which shows the nature of dispute between the parties and the same is reproduced below :--

"M/s. Modi Yarn Mills, Modinagar, filed a classification list MNO. Yarn/5/83, dated 18-4-1983 in respect" of celiulosic spun yarn. In the classification test they claimed classification of yarn.

(i) 2/40s N.C.S.W. 15% in admixture with viscose fibre 85% and

(ii) 2/40s N.C.S.W. 48% in admixture with viscose fibre 52% under T.L No. 18-III (91) and sought assessment under notification no. 131/77 as amended by notification no. 275/82, dt. 13-11-1982. On perusal of the classification list the classification of the yarn was not found to answer the description of 18-11 and consequently a show cause notice was issued to the party vide this office even no. 4608 dt. 4-7-83 asking them as to why their classification list should not be

modified so as to classify the said under T.I. 18-III (ii)."

The operative portion of the order is as follows :-

"The classification list is accordingly amended to the extent that yarn being manufactured as detailed in the classification list no. Yarn/5/83 should fall under T.I. 18-III (ii)."

The relief sought in the writ petition is that the order dated 8-3-1984 be quashed and that this court should hold that the yarn manufactured by the petitioners by blending non-cellulosic synthetic waste with fibre of cellulosic origin is covered by Tariff Item No. 18-III (i) and does not fall under Tariff Item No. 18-III (ii).

2. There is no denying that the said order is appealable under the Central Excises and Salt Act, 1944. The appeal lies to the Appellate Collector, Central Excise, New Delhi. Since the said departmental remedy is available to the petitioner, we feel that we should not exercise our extra-ordinary jurisdiction under Article 226 of the Constitution.

3. Learned counsel for the petitioner, however, tried to persuade us to hold that it is a fit case where interference was called for and the existence of an alternative remedy should not prevent us from interfering in this petition. Reliance was placed on the following cases :-

(i) Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, .

(ii) Dunlop India Ltd. v. Union of India AIR 1977 S.C. 597.

(iii) State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd., .

(iv) Bansal Steelsons Co. Pvt. Ltd. v. Union of India 1974 A.L.J. 350.

It is not necessary for us to advert to the facts of each of the aforesaid cases, In our view, the latest decision of the Supreme Court in Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, is opposite to the instant petition. In particular, the following observations made in para 11 of the said decision are relevant:

"Under the Scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed Authority under Sub-section (i) of Section 23 of the Act, If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by

a Statute which gives a special remedy for enforcing only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolvernamptor New Water Works Co. v. Hawkesford* (1859) 6 C.B.N.S. 336 at p. 356 in the following passage :-

"There are three classes of cases in which a liability may be established founded upon Statute ***** But there is a third class viz: where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ***** the remedy provided by the Statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the Statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.*-1919 A.C. 368 and has been re-affirmed by the Privy Council in *Attorney-General of Trinidad and Tabago v. Gordon Grant and Co.* 1935 A.C. 532 and AIR 1940 105 (Privy Council) . It has also been held to be equally applicable to enforcement of rights, and has been followed by this court throughout. The High Court was, therefore, justified in dismissing the writ petitions in limine."

4. Attention may also be drawn to the Supreme Court decision in *Jaipur Hosiery Mills (P) Ltd. v. The State of Rajasthan and Ors.* (1970) 26 S.T.C. 341, where the following observations were made :

"It has been pointed out that the High Court proceeded to decide whether the banians and chaddies were included in the term "hosiery products." Such a decision should not have been given by the High Court but should have been left to the assessing authorities dealing with each individual case. In our judgment the High Court ought not to have gone into the matter as it was for the assessing authorities to decide in each case whether the goods which had been subjected to tax were hosiery products, with these observations the appeals are dismissed but in the circumstances there will be no order as to costs."

5. Learned counsel contended that the departmental remedy will not be an equally efficacious remedy available to the petitioner because departmental appeals take time to decide and there is no justification for compelling the petitioner to pass through the entire gamut as laid down in the Central Excise Act. Further, a number of appeals have to be filed from time to time and lastly, the question of payment of tax will also be there.

6. We have taken into consideration these aspects of the matter but in our view, they are not tenable. The appellate authority undoubtedly can grant stay orders in fit cases and the mere fact that the appeals take some time to decide will not be a sufficient ground for interference in the writ petition. Such a general ground can be advanced in respect of proceedings which have been treated as equally efficacious remedy, e.g. suits which take long to decide. Treating the matter as

one of discretion, we do not think that there is any exceptional ground on the basis of which we should depart or deviate from the normal practice which we follow in these matters.

7. With these observations, we dismiss this petition in limine.