

(1991) 02 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 13836 of 1988

M.R. Electronic Components Ltd.

APPELLANT

Vs

Assistant Collector of C. Ex.

RESPONDENT

Date of Decision : 12-02-1991

Acts Referred:

Citation : (1994) 46 ECC 85 : (1991) 54 ELT 63

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : Shri Sriram Panchu, for the Appellant; Shri K. Jayachandran, Addl. Central Government Standing Counsel, for the Respondent

Judgement

K.M. Natarajan, J.

1. This writ petition is filed for the issuance of a writ certiorari calling for the records and quash the impugned order in C.No. 1513/88 dated 31-

10-1988 passed by the Supdt. of Central Excise, Madras VII Division, Madras (second respondent).

2. The brief facts which are necessary for the disposal of the writ petition are as follows :- The petitioner-company is a manufacturer of

potentiometers and switches. Under the earlier tariff, potentiometers and switches were classified under Tariff Entry 68 of the First Schedule to the

Central Excises and Salt Act, 1944. According to the petitioner, as per this classification, component parts are not duty payable. Under the

Central Excise Tariff Act, 1985, potentiometers fall under the Heading 8533 of the Tariff and the switches under the Heading 8529 and they are

exempted from duty by virtue of the Notification No. 74 of 1975.

3. The second respondent issued three show cause notices to the petitioner-

company calling upon it to submit an explanation as to why component parts should not be levied duty. The petitioner sent his explanation on 15-10-1987 to the above show cause notices contending (a) As per rules for interpretation of the Schedule to the Excise Tariff and the section-note to Section XVI, parts of potentiometers and switches are classifiable as potentiometers and switches respectively. Hence the exemption would apply to these parts also; (b) The petitioner is a small scale industry and hence the petitioner is entitled to the benefit under Notification 175/86 dated 1-3-1986 which provides for the full exemption upto a clearance of Rs. 15,00,000/- and then a concessional rate of duty. On 12-1-1988 the first respondent rejected both the contentions. As against the said rejection order, the petitioner preferred an appeal to the Collector of Central Excise (Appeals). The Collector of Central Excise (Appeals) passed an order on 19-7-1988 wherein in the para 4.3 it was observed :

Coming to their last contention. I do not find any reason for not allowing the benefits of Notification No. 175/86-C.E. Once their factory is registered as a SSI unit, even if they have filed a classification list, claiming particularly the status of SSI, they cannot be deprived the status, which is conferred by a different authority. Therefore, the benefit of Notification 175/86 has to be extended to them, if otherwise eligible. Consequently, I direct the Assistant Collector to reconsider the above and determine the duty liability which might result in revised amounts for appellants, as I find that he has already revised the amounts initially ordered, which strictly speaking also is not correct.

Consequently, the appeal on merit of classification was rejected subject to the modification and direction to the Assistant Collector as stated above. Thereupon the petitioner wrote to the Assistant Collector/first respondent on 1-10-1988 to the effect that on the basis of the principles of natural justice and also due to the fact that in a way the original order has been set aside, the regular procedure of issue of show cause notice etc. as in the case of de novo proceeding may be followed in redetermining the amount so that the petitioner may have an opportunity to go on appeal to the Collector (Appeals) if they are not satisfied with their decision. According to the petitioner, the Assistant Collector without considering the said application and without giving any opportunity to the petitioner, he issued

the impugned order through the second respondent and the second respondent sent the demand notice to the petitioner calling upon them to pay duty. It is only challenging that action of the second respondents this writ petition is filed.

4. In the counter-affidavit filed on behalf of the respondent, it is submitted that no writ will lie against a mere letter and that the petitioner can make his submissions before the first respondent who will pass necessary speaking orders after taking into consideration the objections raised by the petitioner. It was also submitted that the first respondent may be permitted to decide the issue in accordance with law with regard to extending of the benefit of Notification 175 of 1986 as was already held by the Collector (Appeals).

5. After hearing the arguments of the learned counsel appearing on either side, I find that even though the Collector (Appeals) in his order dated 19-7-1988 has directed the Assistant Collector to determine the duty liability after taking into consideration the benefit claimed by the petitioner by virtue of the Notification No. 175 of 1986, till this date that has not been done. But, instead, the impugned order of demand has been issued through the second respondent. I find much force in the contention of the learned counsel for the petitioner that the impugned demand order is illegal as the order of remand passed by the Collector (Appeals) has not been complied with before ever the said demand order was passed.

Further the impugned order was passed before ever the petitioner was given any opportunity. As such, it is violative of the principle of natural justice also. It is only in that view, the writ petition has to be allowed and the impugned order has to be set aside and the first respondent has to be directed to dispose of the matter afresh in the light of the order of the Collector (Appeals) dated 19-7-1988.

6. In the result, the writ petition is allowed, the impugned demand made by the second respondent in pursuance of the order passed by the first respondent is hereby quashed and the first respondent/Assistant Collector is directed to redetermine the amount in the light of the order passed by the Collector (Appeals) dated 19-7-1988 and in the light of the benefit claimed by the petitioner under Notification No. 175 of 1986, after issuing fresh show cause notice and giving opportunity to the petitioner and then dispose

of the same on merits according to law. It is made clear that the petitioner is entitled to raise fresh point, if any, open to him under law. No order as to costs.