

(2013) 11 AHC CK 0071
In the Allahabad High Court
Case No : W.P. No. 2250 (MS) of 2000

M/s. Zindal Pipes Ltd.

APPELLANT

Vs

Cess Appellate Committee (U.P.P.C.B.) and Another

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 4 EFLT 90

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narayan Shukla, J.—Heard Ms. Smita Chitranshi, learned Counsel for the petitioner as well as Mr. Sudhir Pandey, learned Counsel for the respondents. Through the instant writ petition the petitioner has assailed the order dated 4.4.2000, passed by the Cess Appellate Committee, Lucknow in appeal Nos. 18/99 and 29/99, whereby the Cess Appellate Committee has dismissed the petitioner's appeals challenging the order of assessment of Cess dated 16.6.1999.

2. The petitioner is admittedly an engineering industry. It manufactures black and G.I. pipes from hot rolled mild steel and strip rolls.

3. The petitioner has challenged the assessment order, on the ground that it is an engineering industry, therefore, it is not covered under the Water (Prevention and Control of Pollution) Cess Act, 1977 and Rules, 1978 made thereunder for assessment of Cess.

4. The learned Counsel for the petitioner submits that the Water (Prevention and Control of Pollution) Cess Act, 1977 (in short Cess Act) provides for levy of cess on water consumed by persons carrying on certain industries with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution. Section 3 of the Cess Act provides that there shall be levied and collected a cess for the purpose of the Water

(Prevention and Control of Pollution) Act, 1974 and utilization thereunder. Sub-section (2) of section 3 speaks that the cess shall be payable by every person carrying on any specified industry and every local authority. The "specified industry" is defined u/s 2(c), which means any industry specified in Schedule I. Schedule I specifies 16 categories of entry, which is reproduced hereunder:

SCHEDULE I See section 2(c)

1. Ferrous metallurgical industry.
2. Non-ferrous metallurgical industry.
3. Mining industry.
4. Ore processing industry.
5. Petroleum industry.
6. Petro-chemical industry.
7. Chemical industry.
8. Ceramic industry.
9. Cement industry.
10. Textile industry[including cotton synthetic and semi-synthetic fibres manufactured from these fibres.
11. Paper industry.
12. Fertilizer industry.
13. Coal (including coke) industry.
14. Power (Thermal, Diesel and Hydel) generating industries
15. Processing of animal or vegetable products industry [including processing of milk, meat, hides and skins, all agricultural products and their waste.
16. Engineering industry.

5. The learned Counsel for the petitioner submits that the Cess Act is not an enactment to regulate and control pollution, but a fiscal measure to augment the resources of the Pollution Control Boards, however, the assessing authority without notifying the petitioner's industry as specified industry issued notices demanding water cess from the petitioner, on the ground that the petitioner's industry falls under Schedule I. He further submits that it is the end product of the industry, which is material for assessment of cess, not the processing act. He further contended that the petitioner's industry manufactures G.I. and black pipes from M.S. Strip rolls, which is being purchased from Steel Authority of India Limited, Bokaro. Its 80% of total product get blacked varnished and sold in market, rest 20% pipes get galvanized and then sold.

6. He further submits that in Writ Petition No. 3727 of 1985: M.C. Mehta v. Union of India, U.P. Pollution Control Board through its affidavit has categorized the petitioner's sister concern M/s. Hindustan Pipe Udyog Ltd. as engineering industry, which has been merged subsequently in the petitioner's industry in dispute. It is further stated that once the Pollution Control Board has accepted the steel manufacturing unit as engineering industry, then the petitioner's industry, which is engaged in manufacturing of black and galvanized steel tubes in the same manner as of M/s. Hindustan Pipe Udyog, is also an engineering industry. However, it is admitted that by means of notification dated 16.4.1993 the Engineering Industry has been added and made liable to pay the Cess under the Cess Act, but the assessment order for assessment of Cess prior to it is without authority of law, therefore, the same is void ab initio.

7. The petitioner has very categorically stated that the petitioner's industry does not fall within the ambit of Schedule I of the Cess Act. It is further stated that 75% to 80% of the water consumed is being used for agricultural purposes, which is not liable to be assessed under the Cess Act. In support of his submission, the learned Counsel for the petitioner cited some decisions of the Hon'ble Supreme Court as well as of this Court, which are referred hereunder:

1. Modi Industries Ltd. Modinagar and another v. State of Uttar Pradesh and others 1973 (27) FLR 273 (All).

2. Tata Engineering and Locomotive Co. Ltd., Jamshedpur Vs. State of Bihar and Others, .

3. Bihar State Pollution Control Board Vs. Tata Engineering and Locomotive Co. Ltd., .

4. Union of India etc. etc. Vs. National Hydroelectric Power Corpn. Ltd. and Others etc. etc., .

5. Indian Telephone Industries Ltd., Naini, Allahabad v. Cess Appellate Committee, Uttar Pradesh Pollution Control Board, Lucknow and another, Full Bench Decision of Allahabad High Court dated 5 October, 2004, passed in Civil Misc. Writ Petition No. 9634 of 1989.

6. M/s. Geep Industrial Syndicate Ltd. Allahabad v. The Cess Officer, U.P. and others, Division Bench judgment of Allahabad High Court dated 3.3.2004, passed in Civil Misc. Writ Petition No. 1989 of 1982.

7. Bharat Heavy Electricals Limited, Khailar, Jhansi v. State of Uttar Pradesh and others, order of Single Judge of Allahabad High Court dated 5.7.2004, passed in Civil Misc. Writ petition No. 7269 of 1989.

8. Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, .

9. M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, .

10. Britannia Industries Ltd. vs. T. N. Pollution Control Board, (2000) 9 SCC 68 .

11. M/s. Century Laminating Company Limited v. U.P. Pollution Control Board, Lucknow, Division Bench judgment of Allahabad High Court, Lucknow Bench, dated 30.11.2004, passed in Writ Petition No. 2865 (MB) of 1995.

12. M/s. Bharat Udyog [Unit of Manohar Lal Hira Lal (P) Ltd. v. Cess Appellate Committee and another, Single Judge judgment of Allahabad High Court, Lucknow Bench, dated 29.8.2006, passed in Writ Petition No. 2159 (MS) of 1990.

8. The respondents have contested the matter by filing the counter-affidavit as well as through oral arguments raised by Mr. Sudhir Pandey, learned Advocate appearing on its behalf.

9. It is contended on behalf of respondents that the petitioner preferred the impugned appeal after limitation provided under the Water (Prevention and Control of Pollution) Cess Rules, 1978 (in short Cess Rules, 1978). It is stated that section 9(3) of the Cess Rules, 1978 provides the period to file an appeal as 30 days from the date of communication of order of assessment or the order imposing penalty upon the appellant. It is further submitted that proviso to sub-section (3) empowers the Chairman of Appellate Committee on his satisfaction that there was good and sufficient reason for the delay in preferring the appeal, to allow the appeal to be preferred after the expiry of 30 days, but before expiry of 45 days from the date of communication of order of assessment or the order imposing penalty on the appellant. Thus, the maximum period to file appeal is 45 days, but the appeal was filed after expiry of about six and half months from the date of order of assessment. Therefore, the Appeal No. 29/99 has rightly been dismissed as being barred by time.

10. So far as the Appeal No. 18/99 is concerned, it has been dismissed on merit. The Appellate Authority has examined the aspect of delay in filing the appeal. This Appeal No. 18/99 was preferred against the assessment order dated 16.6.1999 for the assessment period 1.1.1998 to 31.1.1999 for realization of total sum of Rs. 46,670.58. In this appeal the petitioner's stand has been that the petitioner's industry owns huge agricultural land and about 80% of water was being used for the agricultural purposes which is not liable to be assessed under the Cess Act. Remaining 20% water is used for industrial purposes for which the details of water consumption was communicated to the respondent through monthly Cess returns based on water meter reading and accordingly payment of Cess has also been made. It is stated that the Industry is only fabricating steel pipes and tubes out of sheets received from different industries, as such it is not covered under the Cess Act. The appellate authority has discussed the issue and found that the assessment order is based on the figures collected by the officers on visit of appellant-industry on 23.10.1998. The figures were supplied and endorsed by the representative of the industry who was present at the time of inspection. The seal of water meter was not found intact, thus the water meter was found faulty. The appellate authority has observed that

the appellant is said to have installed two water pumps of 50 and 45 H.P. which is stated to have been operated for 9 hours each per day and their water discharge as per calculation is being found to be 113 and 101 kilo litre/hour respectively. After assuming a pump standby the per day water discharge comes to be 1950 kilo litre/day and the amount of cess has been charged accordingly.

11. So far as the determination of nature of petitioner's industry is concerned, admittedly the petitioner's industry is an engineering industry. Though the appellate authority has not discussed this point, however, I find that the engineering industry has been added in Schedule I under entry No. 16 w.e.f. 16.4.1993 and the period of assessment is of 1998 to 1999, by that time since the engineering industry was included in Schedule I of the Cess Act, it cannot be said that the petitioner's industry is not covered under Schedule I of the Cess Act for assessment of Cess.

12. So far as the dismissal of Appeal No. 29/99 on the ground of limitation is concerned, the learned Counsel for the petitioner submitted that the normal Rule requires that an appeal should always be made to allow the matter to be contested on merit. In support of his submission he cited the following decisions:

1. Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, .
2. Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, .

13. He also cited the following decision of this Court, on the same very point:

1. Shankar and another v. Deputy Director of Consolidation and others, Civil Misc. Writ Petition No. 50551 of 2013, decided on September 23, 2013.

Rule 9(3) of the Cess Rules, 1978 deals with the period of preferring an appeal against the order of assessment, which is extracted below:-

9. Appeal (1).....

(2).....

(3) Such appeal shall be preferred within a period of thirty days from the date of communication of the order of assessment or the order imposing penalty on the appellant:

Provided that if the Chairman of the Appellate Committee is satisfied that there was good and sufficient reason for the delay in preferring the appeal, he may, for reasons to be recorded in writing allow the appeal to be preferred after the expiry of the aforesaid period of thirty days and before the expiry of forty-five days from the date of communication of the order of assessment, or the order imposing penalty, on the appellant.

14. In the case of the The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, the Hon'ble Supreme Court of India on the point of maximum limit to extend the period of limitation has held as under:

23. Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the Tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of section 14(2) of the Limitation Act.

Further the Hon''ble Supreme Court has followed the aforesaid judgment in its subsequent judgment in the case of Nasiruddin and Others Vs. Sita Ram Agarwal, .

15. Thus, it is the settled law that the period of limitation for filing an application or appeal cannot be extended beyond the maximum period provided under the relevant Act and/or Rules. The period of preferring an appeal in the case on hand is regulated by Rule 9 of the Cess Rules, 1978, upon perusal of which, I find that ordinarily the period of preferring an appeal against the order of assessment is provided as 30 days from the date of communication of order of assessment or the order imposing penalty by the appellant. However, in the proviso clause on being shown good and sufficient reason for the delay in preferring the appeal, subject to satisfaction of the Chairman of the Appellate Committee, the appeal can be allowed to be preferred after expiry of the period of 30 days and before the expiry of 45 days. Thus, ordinarily period to file an appeal is 30 days, which can be extended to 45 days on fulfillment of aforesaid condition, but any how it has not been permitted to be filed beyond the aforesaid period, whereas in the present case the appeal No. 29/9 was preferred after about six and half months. Therefore, I am of the view that definitely it was barred by the statutory period, therefore, the normal Rule to condone the delay for adjudication of the appeal on merit shall not apply in the matter. With the aforesaid observations the writ petition stands dismissed.