(1992) 07 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 207 of 1991

National Winder APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 9(2)
Central Excises and Salt Act, 1944 — Section 11A, 35
Constitution of India, 1950 — Article 226

Citation : (1993) 64 ELT 388

Hon'ble Judges : D.S. Sinha, J;A.N. Gupta, J

Bench : Division Bench

Advocate : Bharat Ji Agarwal, for the Appellant; Shishir Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Shri Bharat Ji Agarwal, the learned counsel representing the petitioner and Shri Shishir Kumar, learned counsel appearing for the respondents.

2. The petitioner is aggrieved by the two notices dated 16-11-1990, issued to it under Rule 9(2) of the Central Excise Rules, 1944 (hereinafter called the Rules), read with proviso to Section 11A of the Central Excises and Salt Act, 1944 (hereinafter called the Act), copies whereof are annexures 21 and 22 to the petition.

3. The impugned notices are demand-cum-show cause notices and are based on the assertion that during the given period the petitioner collected from the customers Dharmada charges on the sale of fans manufactured by it but did not declare the same in the price list with the intention of evading payment of Central Excise Duty.

4. Shri Bharat Ji Agarwal, learned counsel for the petitioner, contends that Dharmada charges collected by the petitioner cannot be included in the

assessable value of the goods manufactured by the petitioner. To buttress his submission Shri Agarwal has relied upon following :

(A) Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., .

(B) 1980 UPTC 1043 Commissioner of Sales Tax, U.P., Lucknow v. Jagroop Ram Bhagwati Prasad, Sutterhatti, Jaunpur;

(C) 1987 (30) Excise Law Times, 624, Mohan & Co., Madras v. Collector of Central Excise, Madras;

(D) Order and judgment dated 3rd March, 1983 given by the Collector (Appeals), Central Excise, u/s 35 of the Act in the appeal between the petitioner and the Central Excise Department. A copy of the said order and judgment is annexure 4 to the petition;

(E) Order and judgment dated 29th July, 1991 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi passed in the three appeals between the Collector of Central Excise, Allahabad and Pandhmukhi Engineering Works and Sinni Manufacturing Engineering Works;

5. The contention of learned counsel for the petitioner is refuted by Shri Shishir Kumar, the learned counsel representing the respondents. According to Shri Kumar the amount of Dharmada collected by the petitioner from the customers was liable to be included in assessable value of the goods manufactured by it for the purposes of determination of the excise duty payable on the said goods. To fortify his submission Shri Kumar has placed reliance on the following Supreme Court decisions :

(i) Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others,

(ii) Assistant Collector of Central Excise and Others Vs. Madras Rubber Factory Ltd.,

(iii) Union of India (UOI) Vs. Kanti Lal Chunilal and Others, ;

6. In view of the order which we are about to pass it is not necessary for us to go into the question whether the Dharmada charges collected by the petitioner is liable to be included in the assessable value for the purposes of determination of the excise duty payable by it.

7. It cannot be gainsaid that no final adjudication has been made by the respondent No. 3. Only show cause notices have been issued to the petitioner and in response thereof the petitioner has already filed his reply. The respondent No. 3 is yet to make up his mind on the issue after considering the reply of the petitioner. The respondent No. 3, after considering the reply of the petitioner and examining the correct legal position, may decide to drop the notices. It will not be appropriate for this Court to stall the proceedings which are maintainable

under the Act. Needless to say, if the petitioner feels aggrieved by the order passed by the respondent No. 3 it will be open to it to challenge the same at the relevant forums and eventually before this Court by means of a writ petition under Article 226 of the Constitution.

8. However, while declining to interfere in the matter at this stage, we would like to direct the respondent No. 3 to decide the issue on merits and in accordance with law, specially the cases noted above and relied upon by the counsel for the parties, and the respondent No. 3 is so directed.

9. Subject to the observations and direction made above the petition shall stand dismissed.

