(1982) 09 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 539 of 1982

Orient Paper and Industries Ltd. APPELLANT

Vs

Assistant Collector of Central Excise and Others RESPONDENT

Date of Decision : 27-09-1982

Acts Referred:

Citation : (1983) ECR 226 : (1988) 35 ELT 624

Hon'ble Judges : R.N. Misra, C.J;J.K. Mohanty, J

Bench : Division Bench

Advocate : B.K. Mohanti, P.K. Misra, J. Patnaik and D. Pal, for the Appellant; Standing Counsel (Central), for the Respondent

Judgement

R.N. Misra, C.J.—Petitioner, an existing Company within the meaning of the Companies Act, 1 of 1956, has its registered office at Brajarajnagar in the district of Sambalpur within our territorial jurisdiction. Along with other types and varieties of paper, the Company manufactures poster paper. The dispute raised in this application is in regard to excise duty payable for such poster paper. Petitioner alleges that from March 16, 1976, when item 17 of Schedule I of the Central Excises and Salt Act, 1944, was amended and poster paper was excluded specifically from item 17, sub-item 1, that variety of paper was not exigible to excise duty and could not be taken to have been included in item 17, sub-item 2. Petitioner had, therefore, no liability to pay any excise duty but under mistake he continued to pay the duty at the higher rate under sub-item 2 until it came to know about the judgment in the case of Darshan Hosiery Works v. Union of India and Ors(1981) 12 GLR 533. This judgment of the Division Bench of the Gujarat High Court was delivered on 11th of April, 1980 and was first printed in the month of August, 1980 in Excise Law Times. As soon as petitioner came to know of the judgment, it realised its mistake and approached the authorities. It is contended that petitioner attempted to deliver a revised classification list. According to the stand of the petitioner, petitioner''s liability with effect from June 19, 1980, would be in terms of item 68 and taken along with the explanation appended thereto. Otherwise stated, petitioner maintains that it has no liability from March, 1976, upto June, 1980, in the matter of payment of excise; duty for poster paper and post-June, 1980, liability should be according to the rate prescribed in respect of item 68. This writ application has been filed for a declaration to that effect.

2. This writ application by consent of parties was heard along with O.J.C. No. 783 of 1,982 Straw Products Limited Vs. Factory Officer, Central Excise and Others, , which was an application of another manufacturer of paper on similar grounds. In that case there was an application before the Appellate Collector and certain directions had been given to the subordinates indicating the manner of dealing with the claims while in the present case there has been no such move by the petitioner nor is there any order of the Appellate Collector. Yet, the question being the same, we are of the view that a similar direction as made in the connected case should be given here. We accordingly direct that the Collector (opposite party N6. 3) may either himself or through the Assistant Collector (opposite party No. 1) cause an investigation into the claim of the petitioner both in the matter of furnishing and acceptance of the revised classification list with effect from the date it" has been given and for disposing of the claim for refund as and when made. We understand that there is no application for refund pending in this case. Therefore, the direction which will operate here is in regard to the acceptance of the revised classification list only. That matter should be disposed of within three months from the date of communication of the order.

3. We make no order as to costs.

