(1969) 10 OHC CK 0014

In the Orissa High Court

Case No : O.J.C. No. 307 of 1965

Orient Paper Mills Ltd. — APPELLANT

Vs

Deputy Collector, Central Excise and Others — RESPONDENT

Date of Decision : 28-10-1969

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3, 35
Constitution of India, 1950 — Article 226

Citation : (1969) 10 OHC CK 0014

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

Bench : Division Bench

Advocate : Govind Das, for the Appellant; G. Rath, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—This is an application under Article 226 of the Constitution of India asking for a writ of certiorari against the demands raised by the Deputy Superintendent of Central Excise at Brajarajanagar under the provisions of the Central Excise Rules, 1944.

2. The petitioner is a Public Limited Company incorporated under the Indian Companies Act, 1913 and carries on business, inter alia, of manufacturing and sale of various kinds of paper at its factory at Brajarajanagar in the district of Sambalpur. Among other varieties of paper it manufactures a type of paper which is named as "Creame Wove paper". Under the provisions of the Central Excises and Salt Act, 1944 (Central Act I of 1944) (hereinafter referred to as the Act), a Schedule has been inserted u/s 2 of the Act to the Statute providing the different rates of duty payable in respect of different items of goods. Item No. 17 of the said Schedule reads as follows:--

Tarffic Item No. Description of goods. Rate of duty

Basic special excise.

17.

Paper, all sorts (including paste board, mill board, straw-board and Cardboard) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

(1) Cigarette tissue. Re. 1.00 per Kg. 20% of the basic duty chargeable.

(2)

Blotting, toilet, target tissue other than cigarettetissue, teleprinter, type-writing, maidfeld, bank, bond, art, paper, chrome paper, tubsized paper, cheque paper, stamp paper, cartridge paper, parchment and ceated board (including art board, chrome boa''rd and board for plying cards).

50 P. " Do.

(3)

Printing and writing paper, packing and wrapping paper, straw board an pulp boara, including grey board, corrogated board, duplex and triplex boards, other sorts.

35 P. per Kg. 20% of the basic duty chargeable.

(4)

All other kinds of paper and paper board, not otherwise specified.

50 P. per Kg. 20% of the baaic duty chargeable.

The petitioner''s contention is that it manufactures printing and writing paper, namely, "White printing paper" and has been paying excise duty on such paper for some time past. Since 1955 till some time in 1961 the said paper which was being manufacturing by the Company was duly classified by the Central Excise Authorities as "Writing and Printing paper" irrespective of substance and excise duty was levied thereon on such basis. Upon an analysis duly made by the chemical process the Central Excise Authorities were satisfied that the classification was proper. The quality of production and the raw materials used for such production particularly in respect of this class of paper have continued to be the same and as such there can be no basis for any alteration in the classification. Between January and July 1965, samples of the said paper manufactured by the Company were drawn by the Central Excise Authorities and in August 1965 the petitioner was communicated the decision of the Central Excise Authorities that the paper which has hitherto been classified as "writing and printing paper" was akin to "Creame wove paper" and was, therefore, to be classified not under the third category of Entry No. 17 of the Schedule, but under the second category, and as such there would be an additional duty of 15 paise per kg. as indicated in the said entry.

3. Soon thereafter a demand was raised against the petitioner on 16-9-65 of a

sum of Rs. 42,491.90 paise said to be the differential duty as per statement enclosed. For convenience the contents of the said notice of demand are extracted:

"Demands for differential duty. Central Excise Series No. 56-A

Serial No. E 236317/61. ________________________ 60

Range M/s. O. P. Mills Brairainagar Circle, Sambalpur.

Form D .D. 2.

NOTICE OF MISCELLANEOUS DEMAND FOR PAYMENT OF DUTY

(Rules 9 (2), 10, 10-A. 13, 14. 14-A.19, 37-A, 40, 48, 49, 140, 144, 153, 154, 156-B 160, 164, 191, 191-A, 191-B, 196 and 223-A.)

16-9-1965.

To

M/s. Orient Paper Mills Ltd., Brajrajnagar Dt. Sambalpur (Orissa) L. 4 No. 10/ Paper/55.

Take notice that on behalf of the Central Government, I hereby demand under bond/Rules 10 and 10-A.

Reference (if any) vide order No. V/ 17/22/1/65/16545/ Dt. 28-8-65 of D/C Cuttack payment by you of the sum of Rs. 42,491-90 (Rupees forty two thousand four hundred ninety-one and ps. 90 only) within ten days from the date hereof.

Particulars of Demand : Quantity of 236066.55 kilograms No. of packages 10364 Reams Variety Cream, wove Tariff classification 17 (2)

Rate of duty O. 15 p. (Fifteen paise differential duty as per statement enclosed)

Sd/. Illegible Signature 16-9-65 Central Excise Orient Paper Mills Brajrajnagar."

Subsequently on 16-11-65, a fresh intimation was sent to the petitioner wherein the demand in question was classified under Rules 10 and 10-A of the Central Excise Rules (hereinafter referred to as the Rules) framed under the aforesaid Act. The relevant portion of the said letter may also be extracted:

"I am to inform you that the demand

DD2 E 236317/61 _____________________ 60

dated 16-9-65 was issued for payment of differential duty on cream wove paper cleared as white printing paper, in all amounting to Rs. 35409.92 paise (basic) and Rs. 7081.98 paise (special excise) under Rules 10 and 10-A of the Central Excise Rules 1944.

X X X X X This addendum bears specifically the abstract of the detailed statement enclosed with this office letter under reference, in respect of quantity of paper cleared and differential duty involved under Rules 10 and 10-A of Central Excise Rules 1944 respectively as given below:

Sl. No. Under rules Central Excise Rules 1944 Quantity involved. Differential duty

Basic Spl. excise

1. Rule 10 68120.70 kgs. Rs. 10218.11 Rs. 2043.62

2. Rule 10A 167945.80 kgs.

Rs. 25191.81

Rs. 5038.36

236066.50 kgs.

Rs. 35409.92

Rs. 7081.98"

3 days thereafter, on 19-11-65, the petitioner received another communication on the self-same subject which reads as follows:--

"Sub:-- Paper classification of.

***** In this connection I am to request you that the Rule 10 of C. E. Rules 1944 as noted on the body of the demand No.

E __ 60 236317/61 dated 16-9-66 may please be treated as deleted as the claim falls under Rule 10-A only; that stands.

Further this office C. No. PR-4-OMP-65/ 2320-22 dated 15-11-65 may also kindly be treated as cancelled."

4. Mr. Govind Das, appearing for the petitioner, raises the following contentions :--

(1) "Cream Wove" is not a brand of manufactured paper described under the different classifications in Item No. 17 of the First Schedule of the Act. It is, therefore, not open to the authorities charged with the administration of the Act and the Rules to add to the classification a new item and bring it under one of the four categories occurring in Item No. 17 of the Schedule. According to him, such action is in excess of jurisdiction vested in the authorities under the Act.

(2) The basis for the present classification is a departmental instruction issued by the Collector of Central Excise and is not the result of independent determination by the statutory authority on whom the duty to assess has been imposed by law.

(3) There has been no application of mind by the assessing authority in raising the demand and as such the impugned demand cannot be sustained.

(4) The statutory authority was bound to act as a quasi-judicial Tribunal in

making the assessment and raising the demand. The petitioner was, therefore, entitled to hearing before the additional demand was raised and it was not open to the opposite parties to have acted in such high-handed and arbitrary manner in raising a demand without hearing the petitioner. The impugned demand is, therefore, vitiated for non-compliance of the principles of natural justice.

(5) If the demand comes under Rule 10 of the Rules, there is a statutory limitation of 3 months while if it comes under Rule 10-A as a residuary demand there is no limitation prescribed. According to Mr. Das, bulk of the demand must be held to be beyond limitation and as such no demand for the same could have been raised.

5. We propose to examine the fourth contention of Mr. Das first. It is not disputed before us that the petitioner was not given any hearing before the additional demand was raised. It is undisputed that the jurisdiction which the assessing authority under the Act exercised, apart from being statutory is also quasi-judicial. There can be no scope for dispute in view of the settled position in law that in such cases the asses-see is entitled to a reasonable hearing before any decision can be taken or a demand against him can be raised and sustained. As has been held in various cases, a Tribunal of this type is not absolved of the obligation of complying with the rule of natural justice of according adequate hearing to the assessee before finally disposing of a matter relating to assessment. The fundamental rule of natural justice that "a man has a right to be heard" expressing in final analysis, as it does, respect enforced by law for the feeling of just treatment, evolved through centuries of British and American Constitutional history and adopted and developed in this country represents a profound attitude of fairness between man and man and particularly between individual and the Government. As this rule embraces the whole notion of fair procedure; it is not confined only to the Courts strictly so-called, but takes within its sweep all quasi-judicial functions and to an extent even administrative acts, for, to give every citizen a fair hearing is just as much a canon of good administration as a good legal procedure. In this background, nothing is, in our view, more likely to conduce to just and right decision than the habit of first giving a hearing to any affected party and this element of fair procedure, it may be remembered, has its due place even in administrative justice. In a few cases of the Supreme Court very recently decided their Lordships of the Supreme Court have also reiterated this principle. Therefore, in view of the admitted position that the petitioner had not been given an opportunity of hearing before the actual demand for additional differential duty was raised, the impugned demand must be vacated and the petitioner should be afforded an opportunity of being heard fully before any demand is raised. On this sole ground the impugned demand is liable to be vacated. We, therefore, do not propose to examine the four other points of Mr. Das which have been referred to above, as we think that the petitioner would be entitled to raise these objections before the statutory authority for a determination on these questions in the said forum.

6. Mr. Das brought to our notice a recent decision of the Supreme Court in a case where the petitioner before us was the appellant before the Supreme Court reported in Orient Paper Mills Ltd. Vs. Union of India (UOI), . In the said case a similar dispute had been raised as to classification of printing paper under different categories. Their Lordships of the Supreme Court, while dealing with the direction of the superior authority in the matter of classification of paper, observed, --

"It is clear that at any rate the correctness of the direction issued by the Board was put in issue during the hearing of the revision applications. That apart, we are clearly of the opinion that even if the question of the legality of the directions issued by the Board had not been taken before the authorities under the Act, as that direction completely vitiates the proceedings and makes mockery of the judicial process, we think we ought to consider the legality of that direction. For the reasons already mentioned, we hold that that direction was invalid and the same has vitiated the proceedings before the Collector as well as the Government."

In the counter affidavit filed in this case the opposite parties have also taken the stand that the classification has been made on the basis of the trade notice issued by the Collector of Central Excise in 1963. We, however, do not proceed to examine this point at length in the present application as we are directing the matter to be remitted back to the assessing authority for a fresh determination. We are sure that the petitioner would raise this contention before the assessing authority on the basis of the view expressed by their Lordships of the Supreme Court and the matter would be examined in its proper perspective at that stage.

7. Mr. Rath, learned counsel for the opposite parties, raised a preliminary objection that the petitioner had a statutory right of appeal u/s 35 of the Act and it had also a right of revision u/s 36 thereof. It was the duty of the petitioner to have exhausted the statutory remedies before it invoked the extraordinary jurisdiction of this Court, and on this submission, he contended that we should not exercise our jurisdiction. We, however, do not accept this contention of Mr. Rath in view of the fact that there has been a violation of the rules of natural justice and it has now been authoritatively laid down by the Supreme Court that if rules of natural justice are violated, the aggrieved party is entitled to invoke the extraordinary jurisdiction under the Constitution instead of availing the remedy under the relevant statute. In the circumstances, the preliminary objection is not entertained.

8. On the aforesaid analysis, we issue a writ of certiorari and quash the demand in question, and we further direct that the assessing authority would give a reasonable opportunity of being heard to the petitioner and go into the various contentions raised by the petitioner before any fresh demand for differential duty is raised. This writ application is allowed with costs. Hearing fee of Rs. 200/- (two hundred).

G.K. Misra, C.J.

9. I agree.

