

(1982) 02 OHC CK 0013

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2903 of 1981

Orissa Forest Corporation Ltd.

APPELLANT

Vs

Asstt. Collector, Central Excise and Others

RESPONDENT

Date of Decision : 04-02-1982

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35A(2)

Citation : (1984) 2 ECC 1 : (1982) 10 ELT 875

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

Bench : Division Bench

Advocate : B.K. Mohanty, P.K. Misra, R.L. Bose, S.P. Chowdhury and J.P. Patnaik, for the Appellant; Standing Counsel (Central), for the Respondent

Judgement

R.N. Misra, C.J.—The petitioner is a Government of Orissa Corporation and challenge in this application is to the direction of the Assistant Collector, Central Excise and Customs, Opposite party No 1, in Annexure-4, dated 7-11-81, demanding payment of central excise duty on railway sleepers, sawn fire-wood, manufactured furniture etc. In respect of sleepers, the petitioner contends that similar demands had been raised for an earlier period between June, 1977 and 31-12-78 and the demands were challenged in appeal. The appellate authority, being the Appellate Collector of Central Excise, vacated the demands by decision dated 26-6-81 in Annexure-1. In regard to furniture, by order dated 20th February, 1981, in terms of review u/s. 35A(2) of the Central Excises & Salt Act, 1944 the Collector under the Act held that no levy was maintainable. Notwithstanding these decisions, the direction under Annexure 4 has been issued and such demand, therefore, should be quashed.

2. It is not the case of the opposite parties that any changed circumstances, either by amendment of law or factual aspects being different, have come into existence to support the demand under Annexure-4, but the learned Standing Counsel has contended that there is no res judicata under the Act and merely because the appellate authority has held on the same set of facts relating to a

previous period that the demand is not exigible, there is no bar for the statutory authority to exercise his powers and raise a demand in terms of Annexure-4. The learned Standing Counsel however indicates that the Union Government and its authorities are proposing to dispute the correctness of the appellate decision before authorities under the Statute and, therefore, they have raised the demand in question.

3. We do not think this should be the attitude of the Union Government. The demand is under the Statute and the statutory appellate authority, on the set of facts which are common both to the period when relief was granted and the period for which the impugned demand has been made, has already determined that no levy is exigible. As long as the appellate order stands, it must be duly respected and only when the revisional authority vacates the order and holds that the decision of the appellate authority is wrong and the demand was justified, no demand should be raised. It has been indicated on more than one occasions by the Supreme Court with reference to directions of the Appellate Tribunal under the Income Tax Act that such directions are binding and decisions rendered by appellate authorities should be respected by the subordinate revenue authorities and no attempt should be made to wriggle out of the binding decisions of higher authorities as long as they remain in force. The same principle should be applied to the present set of facts and we are, therefore, inclined to take the view that the demand under Annexure-4 should be set aside but we would make it clear that in the event of the appellate orders being vacated, under the Statute the liability would revive and notwithstanding our quashing Annexure-4 the statutory authority would be entitled to raise a demand in terms of the decision which may be ultimately sustained under the Statute.

4. The learned Standing Counsel points out that the demand under the Statute has to be raised within six months from the period when it becomes due and it is quite possible that the revision may not be disposed of within the time and, therefore, in case the direction which we propose to make is given, the bar of limitation may set in. While quashing Annexure-4, we leave it open to the statutory authorities to move the revisional authority to dispose of the revision expeditiously. If even after such action has been taken, the revision be pending and is not disposed of within six months, it would be open to the Assistant Collector, Opposite party No. 1, to raise a demand and notify the same to the petitioner, but the same would not at all be enforceable. Such demands would ultimately be disposed of in terms of the final decision that may be taken by the revisional authority.

5. In regard to the self removal procedure, counsel for the petitioner wants permission to collect the duty inasmuch as in the event of liability ultimately being sustained, it would become difficult for it to collect the demand from the customers. The learned Standing Counsel says that if any amount is collected it should be deposited with the Department and should not be permitted to be kept by the petitioner inasmuch as the collection would have the statutory colour. Mr.

Mohanty for the petitioner says that these amount so collected would be deposited with a Bank in a Fixed Deposit Account for a term bearing interest at the approved bank rate and if the statutory liability is ultimately sustained the amount may be taken over. To meet such a contention, the learned Standing Counsel says that he is also prepared that the amount may be made over to the Department but would not be appropriated towards general revenue and would be deposited in a special account with a bank which would bear interest. He concedes that in the event of the petitioner's stand succeeding, the amount along with the interest accrued thereon may be taken by the petitioner to be disbursed to the person from whom it may have been collected. The amount which would be in the Fixed Deposit Account should be transferred to the petitioner within one month from the final disposal of the revision.

6. This disposes of the writ application. No costs.