

(1993) 06 BOM CK 0018

In the Bombay High Court

Case No : Notice of Motion No. 287 of 1992 in W. P. No. 853 of 1981

Phenoweld Polymer Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-06-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 141, 226

Citation : (1993) ECR 375 : (1993) 66 ELT 614

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Judgement

Pendse, J.—The facts giving rise to the filing of this Notice of Motion on May 6, 1992 are not in dispute and are required to be briefly stated to appreciate the claim of the respondents. The petitioner No., 1 Company filed Writ Petition No. 853 of 1981 seeking refund of duty recovered by respondents without any authority of law. The petition was disposed of by judgment of Division Bench dated July 9, 1991 and the relief sought by the petitioners was granted. The operative part of the order reads as under :

"The Assistant Collector is directed to grant refund claim after verification within a period of four weeks. In case, the amount is not refunded within four weeks from today, then the petitioners are entitled to recover the amount with interest at 15% per annum from today till realisation."

It is not in dispute that the respondents did not carry out the directions of the Division Bench.

2. On September 20, 1991, Section 11B was introduced in Central Excises and Salt Act (hereinafter referred to as the "Act") and the Section, inter alia, provided that notwithstanding anything contained in any other law. the claim for refund shall be made in accordance with the provisions of Section 11B and shall also be disposed of in accordance with the provisions of the Act. Long after introduction of Section 11B of the Act, the respondents have taken out the

present Notice of Motion on May 6, 1992 seeking variation or modification of the order passed by the Division Bench in the light of the provisions of Section 11B of the Act. Shri Desai, learned counsel appearing on behalf of the respondents, submitted that in view of the enactment of the statutory provisions, the respondents are not bound to carry out the writ issued by this Court and in case the petitioners desire refund, then application shall have to be made only u/s 11B of the Act.

3. Shri Paresh, learned counsel appearing on behalf of the petitioners, submitted that the application for variation is not maintainable in view of the dictum laid down by the Supreme Court in the judgment reported in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, . The learned counsel placed strong reliance upon the ratio laid down by the Supreme Court in Paragraph 10 of the judgment. Paragraph 10 reads as follows:

"The High court's order is not sustainable for yet another reason. Respondent's writ petition challenging the order of dismissal had been finally disposed of on 10-8-1984, thereafter nothing remained pending before the revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29-1- 1986 he could have filed a separate petition under Art. 226 of the Constitution challenging the validity of the notice as it provided a separate cause of action to him. The respondents was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning. "

Shri Paresh submits that the Supreme Court has held that the High Court has no jurisdiction to entertain the application as no proceedings were pending. It was urged that when the proceedings were terminated by final disposal of writ petition, it is not open for the court to re-open the proceedings by means of a miscellaneous application.

4. Shri Desai submitted that the observations of the Supreme Court in Paragraph 10 of the judgment should be read in the context of the facts of that case. it was urged that the Supreme Court never contemplated that the Courts cannot review the orders passed in Writ Petitions. Shri Desai submitted that it is now well settled that courts can always take into consideration subsequent events and especially the change in the statutory law. Shri Desai did not dispute that the proceedings commenced by the petitioners have ended but urged that as long as the writ was not enforced, it was always open for the respondents to seek

variation in view of the statutory changes. Though there is merit in the contention of Shri Desai, we are bound by the dictum laid down by the Supreme Court and in view of Article 141 of the Constitution of India, it is not permissible to take a different view by accepting the contention that the ratio was laid down on the facts of a particular case.

5. Accordingly, Notice of Motion fails and is dismissed with costs.