(1981) 01 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2115 of 1980

Poddar Projects Ltd. APPELLANT

Vs

The Assistant Collector, Central Excise III Division and The Superintendent of Central Excise RESPONDENT

Date of Decision : 23-01-1981

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1983) 3 ECR 2049D

Hon'ble Judges : Raghuvir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raghuvir, J.—Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein, the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, direction, order or orders and direct the respondents to act according to law laid down in Central Excise Notification No. 16/79 dated 20.1.79 and restrain from collecting excise duty on skull scrap, runners and raisers arising out of the manufacture of Steel ingots through the aid of electric furnace in the petitioner industry.

2. This petition coming on Wednesday, the 21st day of January 1981, and Thursday, the 22nd day of January 1981, and this day on for hearing upon perusing the petition and the affidavit therein, and the writ and Rule Nisi directed by the order of the High Court, dated 13.5.80 and made herein and the records submitted in pursuance thereof, and the counter affidavit filed herein and upon hearing the arguments of Mr. V. Jagannadha Rao. Advocate for the Petitioner and of Mr. K. Subrahmanya Reddy, Standing Counsel for the Central Government on behalf of the respondents, the Court made the following:

ORDER (Writ Petition Number 2115 OF 1980)

3. M/s. Poddar Projects Limited (the company) manufactures steel ingots for the

company obtained licence No. 1/73 (steel ingots) from the Central Excise Department with Code No. 17456. The ingots are manufactured in electric furnace by the company. In the process of manufacture, "runners", "risers", "skull scraps" are also produced. These three are referred to as waste material and at times, the runners, (risers) and skull scraps are recycled in further process by melting them to produce steel ingots. The company in the instant case sold the waste material to other industries. It is as respects the sale transactions that the question of payment of duty under the Central Excises and Salt Act I of 1944 arises in this writ petition.

4. The duty payable on steel ingots is Rs. 350/- per metric tonne under item 26 of the third schedule of the Act. The company was served a notice on April 25, 1980 to produce evidence as respects the correctness of payment of duty while it cleared runners, risers at the rate of Rs. 100/- per metric tonne in August, September, October, December of 1979 and January, February and March of 1980.

5. The Company did not make any representation before the revenue authorities but seeks a direction from this Court to the Assistant Collector, the Superintendent of Central Excise at Hyderabad to follow the procedure in Notification No. 16/79 dated January 20, 1979/promulgated in exercise of the powers under Rule 8 of the Central Excise Rules of 1944. The company asserts it is entitled to exemption under 16/79 notification and if the issue is held in its favour, the notice on April 25, 1980 the Company avers no inquiry need be held against the company. The issue thus raised largely turns, so it is represented by the company, on the interpretation of the notification No. 16/79?CE.

6. The Assistant Collector of Central Excise Division III, Hyderabad resists this direction sought for by the company Inter alia on the ground that it is open to the company to submit explanation at first and in the inquiry if any decision is held against the company, it is averred by the revenue that there is a right of appeal, a further appeal to the recently constituted Excise Tribunal. Besides it is urged the question mooted raised by the company is not a pure question of law and cannot be decided without having decided the relevant facts. This Court, it is urged by the Revenue, should not interfere at the stage of show-cause notice and cited the decision of this Court in W.A. No. 123 of 1975 rendered on April 3, 1975 to direct the Company to avail of the alternative remedies available in the Act I of 1944.

The notification with No 16/79-CE dated January 20, reads as under :

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts skull scrap and runners and risers, falling under item No. 26 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon.

Provided that such skull scrap and runners and risers have arisen in the course of manufacture of steel ingots with the aid of electric furnace and are used in the manufacture of steel ingots in the factory of production.

Provided further that where such skull scrap and runners and risers are cleared for use in the manufacture of steel ingots with the aid of electric furnace elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules, 1944, shall be followed.

7. "The Company asserts their waste material of skull scrap, runners and risers if in the further process should the company "use" the waste material the first proviso is attracted. This contention is not disputed. It is in the second proviso two manufacturers are contemplated the manufacturer who produced waste material is to referred as "user" and with reference to "elsewhere" the other manufacturer the user of the waste material can claim exemption if he uses electric furnace. The further requirement of which the second proviso speaks is of compliance of Chapter X of the Central Excise Rules of 1944. Who has to comply the Chapter X of the rules ? The "elsewhere" user or the manufacturer of waste material is the question at issue. It is argued on behalf of the company that waste material if it is recycled in their further manufacture of steel ingots, duty is wholly exempted is clear from the first proviso therefore juxtaposed this circumstance the elsewhere user in the second proviso uses the waste material in electric furnace the elsewhere user has to comply Chapter X of the Central Excise Rules of 1944. On the contrary it is argued on behalf of the Revenue, true it is, the company cannot supervise whether waste material is used by the elsewhere user in electric furnace, nevertheless it is urged by the Revenue that the words "the procedure set out in Chapter 10 of the Central Excise Rules, 1944 shall be followed" as forming part of the last limb of the second proviso in the context of facts the manufacturer of waste material (or the vendor) has to comply Chapter X rules.

8. If the contention of the company is accepted, then it may be a question of law. But if the contention of the revenue is to be accepted (in which case it is a question of fact whether the elsewhere user has to comply various requirements under Rules 192 to 196 and 196-A for it is the Revenue Authorities that have to record their "satisfaction", before any exemption is ordered.) The impugned notification of 16/79 was promulgated on January, 20, 1979. What notification occupied the field before January 20, 1979 on aspects covered by the second proviso, how the revenue was exercising powers with reference to the purchaser referred to as elsewhere user; the former practice, before and the procedure followed from January 20, 1979, all these cognate aspects enter the verdict.

9. The impugned notice points the procedure adopted by the company between August, 1979 to March, 1980. In the notice two industries M/s. Balaji Steel Roiling Industries and M/s Prabhu Steel Industries, Kukatpally Hyderabad are referred vis-a-vis the specified transactions. Therefore it is not possible to consider the question raised without determining the facts pertaining to the two industries. In these circumstances it is difficult to hold ''that a pure question of

law is raised with reference to the scope of the second proviso of the impugned notification. Following the dicta laid in the decision in W.A. No. 123 of 1975, I direct the company to submit their, explanation before the Assistant Collector, Hyderabad and an inquiry under the Act I -of 1944 may be held by the authorities under the Act. Nothing in this order should be construed to have decided any question raised in the writ Petition.

11. The writ petition is dismissed as indicated above. No costs.

