
(1991) 08 MAD CK 0098
In the Madras High Court
Case No : Writ Appeal No. 281 of 1986

Raghavendra Enterprises

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-08-1991

Acts Referred:

Citation : (1996) 83 ELT 271

Hon'ble Judges : Nainar Sundaram, J; Bellie, J

Bench : Division Bench

Advocate : Shri N. Venkataraman, for M/s Row and Reddy and V. Parthasarathy, for the Appellant; Shri K. Jayachandran, Additional Central Government Standing Counsel, for the Respondent

Judgement

1. This Writ Appeal is directed against the order of the learned single Judge in WP No. 10415 of 1985, (Raghavendra Enterprises by Managing Partner, B. Singh, Madras-1 v. Union of India by its Secretary (Excise) Ministry of Finance, North Block New Delhi & Others) disposed of alongwith other Writ Petitions. The petitioner in the Writ Petition is the appellant in the Writ Appeal. Convenience suggests that we refer to the parties as per the nomenclature assigned to them in the writ petition. The petitioner questioned the levy under the Central Excises and Salt Act, 1944, hereinafter referred to as the Act, on its products, betel nut powder, packed in packets. The products of the petitioner were sought to be classified as Pan Masala. The petitioner having paid the duty under protest, also wanted refund of the same. The learned Single Judge held that the products of the petitioner could not be classified as Pan Masala so as to attract the levy, under the Act. However, on the question of refund, the learned single Judge took note of an accepted a proposition urged on behalf of the respondents that if the petitioner has passed on the excise duty to its consumers, it would become ineligible to claim the refund. Rulings rendered by Benches of this Court were taken note of by the learned single Judge on this question. The learned single Judge opined that the question as to whether the petitioner has passed on the excise duty to its consumes is a controversial one, which cannot be adjudicated

upon by him in writ powers and in this view, the learned single Judge directed the third respondent to examine this question and further said that if the third respondent comes to the conclusion that the excise duty has not been passed on to the consumers, necessary orders for refund shall be made, otherwise a reasoned order for coming to the conclusion that the petitioner has passed on the excise duty to its consumers shall be passed, the correctness of which could be agitated by the petitioner in the manner known to law. The petitioner is aggrieved with regard to the opinion expressed by the learned single Judge that if the petitioner had passed on the excise duty to its consumers, it would become ineligible to claim the refund. Thus, the petitioner has preferred this Writ Appeal as against the above portion of the order of the learned single Judge.

2. Mr. N. Venkataraman, learned counsel appearing for the petitioner, submits that the view that if the excise duty had been passed on to its consumers, the petition would become ineligible to claim the refund is not tenable in the light of pronouncements other than those relied on by the learned single Judge, and in view of the opinion expressed by the learned single Judge on the legal question, the process of going before the third respondent to try the factual question would prove a futile one, unless on facts the petitioner demonstrates that it had not passed on the excise duty to its consumers. Learned counsel for the petitioner is anxious to get rid of this opinion of the learned single Judge, circumscribing the scope of the enquiry that was directed to be (done) by the third respondent.

3. However, Mr. K. Jayachandran, learned Additional Central Government Standing Counsel, appearing for the respondents, submits that pursuant to the direction given by the learned single Judge, enquiry by the third respondent has been completed and the decision at his hand has gone against the petitioner and there was an appeal to the first Appellate Authority and even the decision by the first Appellate Authority has gone against the petitioner and now the matter is before the second Appellate Authority, namely, Customs, Excise and Gold (Control) Appellate Tribunal, Madras. Mr. N. Venkataraman, learned counsel for the petitioner, submits that the question cannot be treated as *stare decisis* and one of us (Nainar Sundaram, J.) taking note of the conflicting views expressed in the pronouncements, has made a reference of this question to a larger Bench than Division Bench, and the reference is yet to be answered and in view of this, the second Appellate Authority, namely, Customs, Excise and Gold (Control) Appellate Tribunal, Madras, may be directed to deal with the matter as per the law to be settled, without concluding the question as per the opinion expressed by the learned single Judge in his order, subject matter of this Writ Appeal. This plea of the learned single Judge in his order, subject matter of this Writ Appeal. This plea of the learned counsel for the petitioners deserves acceptance. As pointed out by the learned counsel for the petitioners, there is an order made by one of us (Nainar Sundaram, J.) on 2-8-1988 in WP No. 1681 of 1988, suggesting a reference of this question to a Bench larger than a Division Bench. Such decision may form a guidance for the second Appellate Authority, who is now seized of the matter. We find that the reference is yet to be made and

answered. Accordingly, we deem it fit to vacate and we do vacate the opinion expressed by the learned single Judge that if the petitioner has passed on the excise duty to its consumers, it would become ineligible to claim the refund. The second Appellate Authority, namely, Customs, Excise and Gold (Control) Appellate Tribunal, Madras which is seized of the matter shall decide the question, taking note of the law that may get settled. This Writ Appeal is ordered in the above terms. No costs.