
(1985) 01 DEL CK 0031

In the Delhi High Court

Case No : Civil Writ Appeal No. 1033 of 1980

Raj Kumar

APPELLANT

Vs

Ministry of Finance

RESPONDENT

Date of Decision : 23-01-1985

Acts Referred:

Citation : (1985) RLR 425

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : O.P. Verma, D.K. Kapur and Sanjeev Khanna, for the Appellant;

Judgement

J.D. Jain, J.

(1) This writ petition is directed against revisional order dated 22.4.80 passed by the Central Govt. in review case No. 407/80 whereby it set aside order dated 30.4.76 (the date wrongly mentioned as 13.8.76) passed by the Appellate Collector of Central Excise, New Delhi.

(2) The undisputed facts are that the petitioners are, inter alia, manufacturing circles of various sizes and specifications as a small-scale industry under the name and style of M/s. Union Corp., Bharatpur. Some of the circles manufactured by them are used in the pistons meant for motor-vehicles while others are used in various other types of machinery. In the relevant year i.e. 1975-76 the petitioner submitted a classification list showing various types of circles manufactured by them. The said list was approved provisionally by the concerned Asstt. Collector, Central Excise. Eventually, however, the classification was rejected vide order dated 15.5.76 on the ground that all kinds of circles which were used in motor-vehicle parts were excisable under item No. 34-A of the Central Excise Tariff which dealt with parts and accessories of motor-vehicles not otherwise specified. It may, however, be pertinent to notice here that some notifications exempting some motor-vehicle parts were issued from time to time, notification No. 14/75-C.E. dated 1.3.75 which is relevant to the case on hand

being one such notification. The effect of said notification was that certain items mentioned in the schedule were not exempted. One of the items appearing at Serial No. 6 comprised (a) pistons (b) piston rings (c) gudgeon pins, and (d) circles. The contention of the petitioners was that circles which were meant for pistons only were excisable while all other kinds of circles whether used in motor-vehicle parts or other machinery were exempt from duty of excise. However, this plea did not find favor with the Asstt. Collector who, as stated above, made order dated 15.5.76 holding that all categories of circles which were used in motor-vehicle parts were excisable. Feeling aggrieved the petitioner went in appeal which was allowed by the Appellate Collector vide order dated 30.7.76. Thereafter the Central Govt. revised the said order suo motu in exercise of the power u/s 36(2) Central Excise and Salt Act, 1944 (for short "the Act") which had been Raj Kumar vs. Min. of Finance inserted in S. 36 by Act 16 of 1972. Since the order of the Appellate Collector were reversed by the Central Govt. the petitioners have filed this writ petition to challenge the same.

(3) The learned counsel for the petitioners has, inter alia, canvassed that the petitioners on receipt of a show cause notice dated 29.7.77 (annexure T) had represented in their letter dated 23.8.77 (annexure "K") to the Govt, that an oral hearing be granted to them. However, no oral hearing was given by Central Govt. before passing the impugned order. Hence, it is liable to be quashed on this short ground in view of the clear language of the first proviso to S. 36(2). The said provision is:

"36(2).The Central Government may, of its own motion or otherwise, call for and examine the record of any proceeding in which any decision or order has been passed u/s 35 or S. 35A of this Act for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit; Provided that no decision or order shall be varied so as to prejudicially affect any person unless such person is given a reasonable opportunity of making a representation and, if he so desires of being heard in his defense."

(4) On a plain reading of this proviso it is manifest that before the Central Govt. varies any order of the Appellate Collector etc. it must afford a reasonable opportunity to the party, against whom the decision is sought to be made, of making a representation. Further, if the affected party desires to be heard in his defense it is obligatory on the Govt. to hear him before taking any decision to his prejudice. The language of the proviso is explicit and it expressly states that the right of hearing is in addition to the right of making a representation against the proposed action. Evidently the option lies with the affected party and not Govt. in this regard and once the party to whose prejudice an order is sought to be made expresses a desire to be heard there is no option with the Central Govt. but to give an opportunity to the concerned party for hearing. The proviso is obviously founded on the well established principle of natural justice that no person shall be condemned unheard.

(5) Admittedly, show-cause notice dated 29.7.77 purporting to be u/s 36(2) of the Act was given by the Central Govt. to the petitioners and representation dated 23.8.77 was made by the petitioners against the same. There is a specific reference to the said representation in the impugned order itself. The grievance of the petitioners, however, is that they made a specific prayer in the afore said representation that they would like to be heard orally but no opportunity was given to them to address the concerned authority orally with the result that they could not explain the highly technical nature of the problem to the concerned authority. The learned counsel for the respondent is candid enough to concede this position. Under the circumstances, there can be no shadow of doubt that impugned order was made by Central Govt. without complying with the mandatory provisions enshrined in the proviso to S. 36(2) of the Act which obligates the Govt. to give an opportunity of oral hearing, if so required by the affected party. Hence, the violation of the mandatory provisions contained in the afore said proviso is per-se enough to invalidate the impugned order irrespective of any prejudice having been actually caused to the petitioner. Reference in this context may be made to S.L. Kapoor Vs. Jagmohan and Others, . The following observation extracted therein from Margarita Vs. Robert. (1972) 32 L.Ed 2d 556 is very pertinent to note :

"TO one who protests against the taking his property without due process of Law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits."

(6) The upshot of the whole discussion is that the impugned order is liable to be quashed on this short ground. Hence, I need not dwell upon other contentions sought to raised by the petitioners in this petition.

(7) As a result, this writ petition is allowed and the impugned order is quashed. However, it shall be open to the Customs, Excise and Gold (Control) Appellate Tribunal, which is the successor authority to the Central Government in this respect consequent upon the amendments introduced in the Act by S. 50 of the Finance Act 1982 (Fifth Schedule) to consider and decide this matter afresh in accordance with law after affording an opportunity to the petitioners to be heard.