(1998) 11 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 26556 of 1998 and Civil Writ Petition No. 3363 of 1992

Raja Ram Corn Products (PB) Ltd. APPELLANT

Vs

CCE and C, Chandigarh and Others RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

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

Citation : (1999) 81 ECR 194 : (1999) 112 ELT 13

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : Mr. Rajesh Gumber, for the Appellant; Mr. L.M. Suri and Mr. Deepak Suri, for the Respondent

Judgement

1. In this writ petition, challenge is to notices dated 12.9.1991 and 17.2.1992, Annexures P. 10 and P. 11 respectively whereby on the basis of a sample report given by the Chemical Examiner, show cause notice has been issued to the petitioner as to why amount of duty mentioned in the notices should not be recovered from it u/s 11A of the Central Excise and Salt Act, 1944. Notices have been issued on the basis that product manufactured by the petitioner is covered under sub-Heading 1702.19. The petitioner has contended that earlier similar notice was also issued to it which came to be challenged before the authorities and the decision was given in favour of the petitioner. It was held that product manufactured by the petitioner fall under sub-heading 1702.29 of the Schedule to the Central Excise Tariff Act, 1985. It is further the case of the petitioner that one of the industries i.e. M/s. Sukhjit Starch Mills, Nizamabad was also served with a similar notice and that notice also came to be challenged before the authorities under the Act and the matter had gone right up to the Supreme Court. It was held that the product manufactured by M/s. Sukhjit Starch Mills, Nizamabad fall in sub-heading 1702.29. Petitioner thus has contended that show cause notices, Annexures P. 10 and P. 11 dated 12.9.1991 and 17.2.1992

respectively are without jurisdiction and deserve to be quashed.

2. Learned counsel appearing on behalf of the respondents does not dispute that the proceedings between the petitioner and the department as also M/s. Sukhjit Starch Mills which is also manufacturing the product being manufactured by the petitioner, came to be decided in favour of the petitioner and M/s. Sukhjit Starch Mills respectively.

3. In this case, the petitioner has come to this Court at a stage when only show cause notices have been issued to it and in my view, it would be proper if the matter is first decided by the Authority concerned. Accordingly, this writ petition is disposed of with a direction to the Assessing Authority to decide the matter expeditiously by passing a speaking order. The Assessing Authority, while deciding the matter, shall also take into consideration orders, Annexures P. 12 and P. 15. Petitioner, if so advised, may file reply to the show cause notices within three weeks from today.

4. The writ petition stands disposed of in the terms indicated above. No Costs.