(1998) 09 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18934 of 1991 and Civil Miscellaneous No. 18744 of 1998

Roadmaster Foods Ltd. APPELLANT

Vs

Collector of Central Excise Collectorate RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:
Central Excises and Salt Act, 1944 — Section 13, 23, 6
Constitution of India, 1950 — Article 226

Citation : (2000) 67 ECC 489 : (1999) 1 RCR(Civil) 137

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

Bench : Single Bench

Judgement

V.K. Jhanji, J.—Having regard to the cause shown in the application, order dated 12.8.1998 is recalled. At the request of counsel for the petitioner, the writ petition is taken on Board for final disposal.

2. In this writ petition, petitioner seeks a writ in the nature of Certiorari quashing show-cause notice, Annexure P-4, whereby petitioner was told that it has contravened the provisions of Section 6 of the Central Excise and Salt Act, 1944 and Rules 9(1), 52-A, 53,173- B, 173-C, 173-F, 173-G and 226 of the Central Excise Rules, 1944, inasmuch as it has manufactured and clandestinely removed the steel structures which are classifiable under S.H. No. 7308.00 of the Central Excise Tariff Act, 1985 without taking Licence L-4 and without payment of appropriate duty of Central Excise and maintaining and statutory records as required under the Central Excise Law. Vide this notice, petitioner was called upon to explain as to why action against it be not taken. Reply to the show-cause notice was to be given within 30 days. Petitioner instead of giving reply to the show-cause notice filed the present writ petition and the writ petition is pending decision since 1991.

3. After hearing the learned Counsel for the parties, I am of the view that the writ petition is pre-mature as petitioner has not exhausted the remedy provided

under Central Excise and Customs Act. In Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , the Hon''ble Supreme Court has held:

In the instant case against the order of assessment made by Sales Tax Officer under the Orissa Sales Tax Act the petitioners, assessees, can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under Sub-section (1) of Section 13 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-section (3) of Setion 23, and then ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

4. Likewise, in the State of Goa and others Vs. Leukoplast (India) Ltd. etc., , the Hon''ble Supreme Court has held:

Under the Scheme of the Act, there is a hierachy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under Sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under Sub-section (3) of Section 23 of the Act, and the ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution.

5. In the present petition, petitioner has come to this Court at the stage when only a show-cause notice has been issued to it. Petitioner ought to have given reply to the show-cause notice and in case the same is decided against the petitioner, it has a right to file an appeal before the Commissioner, Central Excise. Since vide show-cause notice, 30 days were given to file reply and the time given has expired, petitioner, if so advised, may file reply within one month from today and on receipt of the reply, the appropriate Authority shall pass a speaking order. Till such time order is passed, recovery shall not effected against the petitioner.

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

