

(1975) 07 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 17/73 of 1973

Saurabh Potteries and Ceramics

APPELLANT

Vs

Appellate Collector, Central Excise

RESPONDENT

Date of Decision : 28-07-1975

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36
Constitution of India, 1950 — Article 226, 227

Citation : (1979) 4 ELT 29

Hon'ble Judges : P.K. Tare, C.J;P.D. Mulye, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Tara, C.J.—In this petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks a writ of certiorari against the order (Petitioner's Annexure B) passed by the Appellate Collector of Central Excise, New Delhi, affirming the order of the Assistant Collector, Central Excise, Indore, dated 27-3-1972 (Petitioner's Annexure A) imposing excise duty on the rasching ring manufactured by the petitioner in his potteries.

2. At this stage we may observe that a revision lies to the Central Government against the appellate order of the Appellate Collector of Central Excise u/s 36 of the Central Excises and Salt Act, 1944. The petitioner did not file a revision, but has come to this court for exercise of prerogative powers against the appellate order. It is not necessary for us to decide the question whether the failure of the petitioner to file a revision before the Central Government would be fatal. However, by way of caution the petitioner has filed an application in this court for imp leading the Union of India and the Assistant Collector of Central Excise, Indore, where a writ of certiorari is sought against the orders of Judicial Tribunals or quasi-judicial Tribunals, it is necessary to impaled all such Tribunals. From that point of view there can be no doubt that impleading the Assistant Collector of Central Excise, Indore, was necessary. However if we impaled them notices will

have to be sent to them and unnecessarily the case will be prolonged. We do not think it necessary to notice them as we are of the view that this case is without any merit and is bound to fail. Therefore, the said application filed on behalf of the petitioner, is rejected.

3. Even if we consider the petitioner's case on merits, we find that there is no substance. The petitioner was being charged excise duty on the rasching rings manufactured by it in its factory. The description of rasching rings has been fully given in the return filed on behalf of the respondent in paragraph 7 as follows :

"Rasching rings are thin walled hallow cylinder made of chemical porcelain and stoneware, glass carbon or metal for the packing of absorption towards. These rings are made in various sizes and even upto 8" X 3" inches. The material used for the manufacture of "rasching rings" are quarts feldspar white burning plastic clay."

Thus, there can be no doubt that rasching rings are porcelain wares and they do not fall within the definition of chinawares. This fact is not disputed by the petitioners.

4. * * * * *

5. It is the petitioner's contention that it manufactures rasching rings, which are unglazed material. We may observe that the test of glazed or unglazed of where chinaware is concerned. The Explanation to Item 22B, pertains to chinaware only and not to porcelainware. Porcelainware, which does not answer the description of sub-items (1) (2) or (3) will be covered by sub-item (4) and lesser excise duty will be payable on such porcelainware of chinaware, which are within the ambit of sub-Item (4)...There is no doubt that the petitioner manufactures porcelainware, although those rasching rings may be unglazed. It does not matter whether the porcelainware is glazed or unglazed. The test of glaze applies only to tiles and to chinawares. Thus, the taxing authorities were right in imposing excise duty of the rasching rings manufactured by the petitioner under sub-item (4) of Item 23B of Schedule I to the Central Excises and Salt Act, 1944. The said decision of the Assistant Collector of Central Excise, Indore and that of the Appellate Collector of Central Excise New Delhi, cannot be said to be erroneous and it was warranted by the provisions of the Central Excises and Salt Act, 1944 and there would be no occasion to interfere with those decisions.

6. As a result of the discussion aforesaid, this petition fails and accordingly dismissed with costs. Counsel's fee shall be Rs. 100/- outstanding amount of the security deposit shall be refunded to the petitioner.