

(1991) 02 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 140 of 1991

Shree Baidyanath Ayurved Bhawan Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2000) 119 ELT 9

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;M.P. Kenia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—This writ petition is directed against an interlocutory order passed by the Customs, Excise Gold (Control) Appellate Tribunal (CEGAT), New Delhi on 24-12-1990. The petitioner filed an appeal against the order of the Collector, Central Excise, made u/s 11A of the Central Excises and Salt Act, 1944, and applied for stay pending appeal. Under a very elaborate order and after giving due reasons, the Tribunal expressed the opinion that it is not a fit case where stay should be granted in full. It noticed that the petitioner had not pleaded any financial hardship either. Having regard to the facts and circumstances of the case, the Tribunal directed the petitioner to deposit 75% of the duty and granted stay for the remaining 25%. It also granted stay of penalty in the sum of Rs. 1,00,000/-. In this writ petition, it is contended that the Tribunal was in error in not granting the full stay as asked for.

2. Ordinarily, this Court does not interfere with interlocutory orders passed by CEGAT. The Counsel for the petitioner, however, contended that there has been a grave procedural irregularity, which must induce this Court to grant the stay. He pointed out that on an earlier occasion, the Tribunal had remanded the matter to Collector (Appeals) for further inquiry on the question whether the petitioner is entitled to exemption from excise duty in terms of Notification No. 179/77, dated 18-6-1977 and that without passing orders in pursuance of the said remand

order, the Collector and not the Collector (Appeals) - has passed an order u/s 11A. (Notification No. 179/77 provides an exemption where the goods are manufactured without use of power). The grievance of the petitioner is that without determining the said question in proceedings pursuant to remand, an independent order was passed by the Collector, Central Excise, u/s 11A.

3. With a view to clarify the factual situation, we have heard learned Counsel for the petitioner and also learned Chief Standing Counsel for Central Government at same length and looked into records. We are of the opinion that the contention urged by learned Counsel for the petitioner is unsustainable and has been advanced without a full and proper appreciation of the relevant facts. As we shall presently demonstrate, the proceedings, which went to CEGAT earlier, and which resulted in an order of remand dated 1/12-7-1990, are totally different and distinct from the present proceedings. We shall first refer to the proceedings, which led to the order of remand dated 1/12-7-1990, and which are still pending before the Collector (Appeals). They relate to classification. They were not proceedings u/s 11A. Those classification proceedings began by a notice dated 9-7-1981 issued by the Superintendent, Central Excise, Range-II, Naini, Allahabad, calling upon the petitioner to apply for L-4 licence in respect of Dant Manjan Lal manufactured by the petitioner since, according to him, it was liable to excise duty under Tariff Item 68 of the Schedule to the Act then in force. The petitioner opposed the same. According to the petitioner, it is not a cosmetic, but a drug and being a drug, it is exempt from duty. This plea was rejected by the Assistant Collector by his order dated 25-8-1981, who held that the said product was dutiable under Tariff Item 68. The petitioner filed an appeal against the order of the Assistant Collector before the Collector (Appeals). This appeal was allowed on 27-4-1983 and the matter was remanded for a de novo inquiry. At this stage, the petitioner raised an alternate contention that, in any event, its product is entitled to exemption under Notification No. 179/77, dated 18-6-1977 inasmuch as no power is used in its manufacture. By his order dated 20-2-1986, the Collector rejected the petitioner's contention and classified the product under Tariff Item 68. The plea of exemption was also rejected. Against this order, the petitioner had filed a writ petition, which was allowed and the matter remanded for fresh decision. In pursuance of these orders, the Assistant Collector again decided on 4/6-7-1986 that the said product is dutiable under Tariff Item 68. Against this order, the petitioner again filed an appeal before the Collector (Appeals), who disposed of the same by his order dated 26-9-1988. He held that with effect from 28-8-1987, the said product (Dant Manjan Lal) has acquired the status of an Ayurvedic medicine drug and is, therefore, exempt from duty. He did not say anything about the position prior to 28-8-1987. Against this appellate order, both the petitioner and the Department filed appeals before the CEGAT, which resulted in the order dated 10/12-7-1990. The CEGAT set aside the Collector's finding that with effect from 28-8-1987 the product Dant Manjan Lal has become an Ayurvedic drug and held that it is classifiable under Tariff Item 68 as cosmetic. However, the matter was remanded to the Collector (Appeals) to

examine the petitioner's claim for exemption under Notification No. 179/77, dated 18-6-1977. In other words, the remand was for a limited purpose of examining whether in manufacturing the product in question, power was used or not. These proceedings are still pending.

4. Now, we shall refer to the present proceedings, which have been taken u/s 11A of the Act. These proceedings commenced by a show cause notice dated 27-8-1987 issued by the Collector, Central Excise, Allahabad, calling upon the petitioner to show cause as to why he should not be made liable to pay duty on the said product cleared during the last five years without payment of Central Excise duty. Certain penalties were also proposed to be levied under appropriate rules. After obtaining several adjournments, the petitioner filed an explanation and he was also heard. The Collector passed orders on 21/25-9-1990 holding that the petitioner is liable to pay duty for the period 28-8-1982 to 28-2-1986. The duty for the period prior to 28-8-1982 was held barred by limitation. Besides demanding duty for the said period, a penalty in the sum of Rs. 1,00,000/- was also levied. In this order, the Collector also dealt with the claim of the petitioner under Notification No. 179/77 and held that the petitioner is not entitled to the benefit of the said notification inasmuch as power was used in manufacturing the said product. It is against this order that the petitioner filed an appeal before the CEGAT and applied for stay and it is in that stay petition that the order impugned herein was passed.

5. It is thus clear that while the earlier proceedings, which resulted in the CEGAT's order dated 10/12-7-1990, were proceedings relating to classification of the said product, the present proceedings were taken u/s 11A of the Act. It is true that the order of remand directed the Collector (Appeals) to determine whether the petitioner's claim for exemption under Notification No. 179/77 is allowable or not and those proceedings are pending, but that does not mean that pending classification proceedings, proceedings cannot be taken u/s 11A. As pointed out hereinbefore, duty for the period prior to 28-8-1982 had already become barred by time by the date of the initiation of proceedings u/s 11A. If the Department had waited further, even duty for later years would have become barred. Prima facie, we see no illegality in the initiation of proceedings u/s 11A pending classification proceedings.

6. We may reiterate that the petitioner's claim for exemption under Notification No. 179/77 has also been gone into in these proceedings u/s 11A and has been negated. The same question will again now be gone into by the CEGAT pending before it. If and when the Collector (Appeals) holds, in pursuance of the order of remand dated 10/12-7-1990, that the petitioner is entitled to the benefit of the said notification, and if that order becomes final, the petitioner may become entitled to exemption, but that is in future. It may be noticed that the principal plea - that the product is a drug and not dutiable - has been negated in the said classification proceedings by the CEGAT, against which we are told a writ petition is now pending in this Court. It is also negated in the present

proceedings u/s 11A. Further, the petitioner chose to raise the claim for exemption under Notification No. 179/77 in these proceedings and suffered an adverse decision. It will, no doubt, be gone into by the CEGAT again. We may repeat that in its order dated 10/12-7-1990, the CEGAT has negated the principal contention of the petitioner that the product Dant Manjan Lal is an Ayurvedic drug and, therefore, exempt from duty. It has held that it is dutiable under Tariff Item 68. (or its equivalent item now obtaining) and the only question left open was whether power was being used in its manufacture or not.

7. In the above circumstances, the plea of procedural irregularity or lack of competence or jurisdiction on the part of the Collector in passing the order now under appeal before the CEGAT, is unsustainable. However, the time prescribed in the Tribunal's order dated 24-12-1990 (on the stay petition) for depositing 75% duty is extended by another four weeks.

8. The Writ Petition is accordingly dismissed with the above modification.