

(1995) 01 MP CK 0073
In the Madhya Pradesh High Court
Case No : Writ Petition No. 22/95

Sidhartha Tubes Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) ECR 448 : (1995) 77 ELT 64

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : J.P. Gupta and Rahul Gupta, for the Appellant; B.G. Neema, for the Respondent

Final Decision : Allowed

Judgement

A.R. Tiwari, J.—This is a petition under Article 226 of the Constitution of India.

2. The petitioners are Public Limited Company having their factory at Sarangpur district Rajgarh in the State of Madhya Pradesh. They manufacture Mild Steel Pipes and Tubes. The respondent No. 3 (Collector) and respondent No. 5 (Superintendent) passed the orders on 10-9-1994 and 17-10-1994 demanding payment of excise duty. Aggrieved, the petitioners had filed the writ petition in this court earlier.

3. This is, thus, second inning. Earlier Petition No. 1680/94, presented on merits however, had suffered dismissal on 28-11-1994 on the linchpin of existence of alternate remedy.

4. The core question, as projected then, was whether galvanisation charges are includable in assessable value for levy of Central Excise duty on galvanised pipe sold by the petitioner. Hearing "monosyllabic no" the petitioner resorted to alternative remedy and filed appeal, as permitted by law, with application to obtain order of stay against orders dated 16-9-1994 and 17-10-1994 pending disposal of the appeal. The appellate authority however, rejected the application

on 19-12-1994 (Annexure 13). It is this order which is now challenged here.

5. I have heard both the sides on this limited question.

6. The counsel for the petitioner contended that discretionary orders on applications for stay are required to be passed with due application of mind. He is extremely critical of observance at infant stage of the proceedings that order was "either perverse or arbitrary." He further urged that issue was not required to be "prejudged" in this manner.

7. In this pursuit, he submitted that the appellate authority was under legal obligation to consider the contentions, as raised, properly that :-

(a) The orders under appeal strangled the petitioners and disabled them to compete with others in trade.

(b) The burden, sought to be imposed, was not passed on to the customers;

(c) The view of the Apex Court supported the plea of the petitioners and rendered the orders unjust and untenable.

According to him, order is bereft of due application of mind to these aspects and the appellate authority was required to apply its mind to these crucial questions and then to decide whether "prima facie" case was or was not made out to put the impugned orders under "eclipse" with or without certain conditions.

8. The order (Annexure 13) does not reflect as to how the satisfaction of unfitness was reached.

9. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, it was held as under :

"Independently of natural justice, judicial review extends to an examination of the order to its being perverse, irrational, bereft of application of the mind or without any evidentiary backing."

10. Lord Mansfield stated in John Wilkes case in classic terms in (1770) 4 Burr, 2528 that discretion means sound discretion guided by law and governed by rule, not by humour. The discretion should not be arbitrary, vague or fanciful.

11. Testing the order impugned in this writ petition on the aforesaid criteria, I find that it is manifestly bereft of due application of mind.

12. I, therefore, find that the aforesaid order (Annexure P/13) is not sustainable and deserves to be mortalised for fresh but proper consideration of the point in issue.

13. In view of the directions that I am making in this petition, I have found it unnecessary to examine the merits of the matter and have elected to leave the matter to be decided by the Appellate Authority afresh with no fetters on its discretion.

14. In the result, I dispose of this petition with the directions as under :

(a) The order (Annexure P/13) is hereby quashed;

(b) The respondent No. 4 (Collector Excise and Gold Appellate Tribunal, Delhi) shall take up the application for stay and decide the same within a period of one month from today in conformity with law by reasoned order after hearing both the sides on this question.

15. The petition is, thus, allowed in terms indicated above with no order as to costs. Copy on usual charges.