(2005) 05 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 6160 of 2005

Sonali Dyeing and Printing Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 10-05-2005

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AB, 11AC

Citation : (2008) 12 STR 524 : (2009) 20 STT 441

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Ramnandan Singh, for the Appellant; Jitendra Malkan, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

D.A. Mehta, J.—Mr. Ramnandan Singh, the learned Counsel prays for permission to amend the prayer clause. Permission granted. Amendment to be carried out immediately.

2. Rule. Mr. Jitendra Malkan, the learned Counsel for the respondents waives service of rule.

3. This petition seeks a declaration to the effect that it is not open to the respondent to effect recovery of alleged dues of Central Excise and also declare that the recovery effected through forceful collection of cheques is illegal and unlawful. A further prayer is seeking direction qua respondent No. 3 to return the cheques which are not deposited.

4. The petitioner, a Private Limited Company engaged in business of processing of textiles, dyeing and printing, has approached the Court challenging the arbitrary and high handed action on part of respondent No. 3 in initiating recovery of alleged Central Excise duty which the petitioner is not liable to pay in accordance with law. It is averred in the petition that, in connection with some inquiry, in case of one Avinash Exports, the petitioner was served with summons

on 30th November, 2004 and ultimately, in pursuance of the said summons, statement of a Director of the petitioner was recorded. It is the say of the petitioner that the benefit availed of by Avinash Exports is sought to be recovered by fastening the liability on the petitioner, without due process of law. That for this purpose, the respondent authorities have collected various cheques for various amounts from the petitioner forcibly. It is further averred that the respondent authorities are claiming a sum of Rs. 24,00,000/- approximately, out of which an amount of Rs. 7,61,000/- has already been adjusted against outstanding Modvat credit. A sum of Rs. 12,61,622/- has been realised by encashing some of the cheques forcibly obtained from the petitioner.

5. On 7th April 2005, this Court while issuing notice had directed the respondent authorities not to deposit and en cash the following cheques:

Cheque No. Drawn on Amount Rs. 279441 Central Bank of India 2,00,000 279442 Central Bank of India 2,36,907

6. Heard Mr. Ramnandan Singh, the learned Advocate for the petitioner. He has reiterated the averments made in the petition and submitted that the petitioner is ready and willing to pay duty (including interest and penalty) which may become payable upon the petitioner being served with a show cause notice, given an opportunity of hearing and after proper adjudication proceedings, subject to the right of the petitioner to challenge any such order in accordance with law. It is further submitted that the petitioner should be restituted with the aforesaid funds forcibly recovered from the petitioner.

7. Mr. Malkan appearing on behalf of respondent authorities has submitted that the petitioner had deposited the cheques for payment of excise duty voluntarily and only with a view to avoid liability to interest and penalty, as provided under Sections 11AB and 11AC of the Central Excise Act, 1944. It is further stated that there was no coercion exercised by the respondent authorities. Lastly, it was submitted that the facts being identical with the case of Century Dyeing and Printing Mills Vs. Union of India (UOI), , on behalf of respondent authorities, same contentions as were raised in the earlier case are adopted and raised in the present case.

8. It is necessary to take note of the fact that, in the present case, no affidavit in reply is filed. At this stage, Mr. Malkan prays for time to tender affidavit. However, in light of the admitted position that the facts are similar as in Special Civil Application No. 3983 of 2005, the said request is rejected.

9. In absence of any statutory provision on the basis of which any such recovery can be made, the action of the respondent authorities in collecting the cheques from the petitioner cannot be sustained in law. The position in law is well settled that liability to excise duty can arise on the production/manufacture of the excisable goods or at best on removal of such excisable goods. In the present case, the respondent authorities have failed to show any such taxing event having taken place on the basis of which they would be entitled to effect such

recovery. Any tax or duty can only be levied and collected in accordance with law, namely, backed by and supported by appropriate provision empowering the authority to undertake such an exercise of levy and collection. The respondent authorities must bear in mind that they are creatures of statute and are bound by statutory law; the powers that they exercise are granted to them by the statute and there are no powers de hors the statute. Therefore, the authorities are bound to act as provided by the provisions under which they can exercise such powers. The revenue is not an organization which is entitled to retain money without sanction of law. Therefore, without entering into the controversy as to whether payment was voluntary or otherwise, in absence of any statutory backing, the funds recovered by the respondent authorities by way of various cheques collected by them, cannot be permitted to be retained and are required to be refunded forthwith. The learned Counsel for Revenue has failed to point out a provision which empowers the authorities to collect and retain cheques in this manner.

10. Needless to state that this action, namely, of refunding the amount, will not entitle the petitioner to contend that it is absolved on merits, in case at the end of inquiry and adjudication process, it is found that the petitioner becomes liable to pay duty in accordance with law. It is further made clear that the respondent authorities are entitled to proceed with the inquiries which are already in progress and if necessary and deemed fit, issue show cause notice to the petitioner in accordance with law; thereafter pass an order of adjudication in accordance with law after hearing the petitioner.

11. In the result, the action of the respondent authorities in collecting various cheques for various amounts is not sustainable in law and is accordingly quashed. Similarly, the action of respondent authorities in adjusting a sum of Rs. 7,61,000/- against outstanding Modvat credit is also not sustainable in law and is accordingly quashed. The respondent authorities are directed to refund the sum of Rs. 12,61,622/- being the total sum recovered by way of encashment of various cheques up till now to the petitioner forthwith, but not later than a week from today i.e. on or before 17th May, 2005, without waiting for a certified copy of the order or a writ of this Court. Similarly, the respondent authorities shall permit the petitioner to reverse the entry regarding outstanding Modvat credit within the aforesaid time frame. Similarly, the respondent authorities are also directed to return amounts the unencashed two cheques bearing No. 279441 and 279442 for a sum of Rs. 2,00,000/- and Rs. 2,36,907/- respectively.

12. The petition is accordingly allowed.

13. Rule made absolute.

14. There shall be no order as to costs.

