(1993) 01 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No''s. 13938 and 13939 of 1992

S.R.F. Limited — APPELLANT

Vs

Central Board of Excise and Customs — RESPONDENT

Date of Decision : 18-01-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37, 37B
Constitution of India, 1950 — Article 14, 19

Citation : (1993) 42 ECC 309 : (1993) 66 ELT 145

Hon'ble Judges : Raju, J

Bench : Single Bench

Judgement

Raju, J.—The above writ petitions have been filed for a Writ of Declaration to declare that the impugned Circular No. 6/92-CX. 6 issued in

F. No. 209/6/92-CX. 6 dated 1-6-1992 issued by the first respondent herein is ultra vires Article 14 and 19(1)(g) of the Constitution of India and

Sections 37 and 37B of the Central Excises and Salt Act, 1944 and Rules 57A, 57C and 57F of the Rules and to declare that the impugned trade

notice No. 50/92 dated 9-7-1992 issued by the second respondent herein is also ultra vires Article 14 and 19(1)(g) of the Constitution of India

and Section 37 of the Central Excises and Salt Act, 1944 and Rules 57A, 57C, 57F, 191BB and 233 of the Central Excise Rules, 1944.

2. The writ petitions were admitted on 14-9-1992 and though initially notice has been ordered in the writ miscellaneous petitions, on 24-12-1992

the learned Judge (Srinivasan, J.) granted interim stay till 18-1-1993 of the operation of the Circular dated 1-6-1992 and trade notice dated 9-7-

1992 in so far as they direct that the intermediate advance licence holders would not be entitled to avail of any MODVAT on such indigenous raw materials used by them. The respondents have also filed a counter affidavit.

3. The writ miscellaneous petitions before this Court for further orders. By consent of parties the main writ petitions themselves have been taken up

for final disposal. Though the learned counsel for the petitioner would vehemently contend that the impugned circulars and notification have no

statutory force and have binding nature on the authorities who are entrusted with the task of enforcing the provisions of the Act and the Rules made

thereunder and discharging quasi-judicial power. Learned Additional Central Government Standing Counsel invited my attention to paragraph 14

of the counter affidavit which is in the following terms :-

As regards the averments in paras 10 and 11 of the affidavit filed in support of the above writ petition it is submitted that the impugned circular has

not singled out the petitioner and petitioner is not affected directly by the issuance of the same. The circular has not directed the third respondent to

disallow MODVAT credit. It is only clarificatory in nature and gives some guidelines. The authorities depending upon the facts and circumstances

of the case may or may not follow the circular. The circular is not binding on them and they are free to dispose of a case according to law. As per

Section 37B of Central Excises and Salt Act, 1944, the first respondent may issue orders, instructions and directions to Central Excise Officers for

the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such excisable goods i.e.

classification/valuation matter. The impugned Board''s circular/Trade Notices deals only regarding the question whether certain type of assessees

are eligible for MODVAT credit or not. Therefore, it is clear that the General Circular has not been issued u/s 37B of CESA, 1944. The

contention of the petitioner that the circular has been issued u/s 37B and therefore it is binding on all the officers of the department is incorrect.

Further, the present case is covered by the restriction imposed under Rule 57C and therefore no additional ground has been created in the Trade

Notice/Circular.

4. After hearing the learned counsel appearing on either side with reference to the relevant materials referred to supra, I am of the opinion that in

view of the categorical stand now taken that the impugned circular has not been issued u/s 37B of the Act and that it was not meant to issue any direction to disallow MODVAT credit by any individual of a particular case as such and it is merely published for the information and the

knowledge of the authorities exercising powers under the Act. Consequently, an adjudication on the constitutional validity and the legality of the

impugned proceedings, becomes wholly redundant and unnecessary. It is made very clear on the very stand taken by respondents themselves in

the counter affidavit filed that the impugned proceedings cannot be pressed into service as any authority or of any binding force per se by any of

the law enforcing authorities under the Act and the Rules made thereunder to disallow the claim or benefit to which the petitioner or an individual

manufacturer is entitled to under the MODVAT scheme on its own individual merits. It is also obvious that the MODVAT scheme introduced by

statutory rules cannot be either nullified or short circuited by means of a clarification of the nature under challenge and it need no further effort to

declare that the claims of the petitioner to the benefits under the scheme if any, should be considered on their own merits and independent of the

impugned proceedings. With this clarification and declaration of the legal position, the writ petitions shall stand finally disposed of. The disposal of

these writ petitions will not stand in the way of the petitioner to challenge the validity of the same in any action that may be taken by the authorities

at the appropriate stage on any one ground already raised or any of the other grounds that are otherwise available for the petitioner. No costs.