

(1992) 10 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 15761 of 1992

Sri Vijay Siddha Products

APPELLANT

Vs

The Collector of Central Excise and Another

RESPONDENT

Date of Decision : 14-10-1992

Acts Referred:

Citation : (1993) 42 ECC 234

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Srinivasan, J.—This Writ petition is directed against a notice issued to the petitioner to show cause why a sum of excise duty should not be demanded from the petitioner. The petitioner's contention is that it had filed a declaration under Rule 174 of the Central Excise Rules, 1944 that the product is falling under Tariff Sub-heading 3003.30 as it is a siddha product produced according to Siddha medicines. It is the case of the petitioner that twice samples were taken and reports were called for from the laboratory and on both the occasions, reports were in their favour and the classification was under sub-heading 3003.30. According to learned Counsel for the petitioner, in the present show-cause notice, the authorities have come to the conclusion that the product falls under sub-heading 3307.30 and proceeded to impose duty on that basis. Learned Counsel contends that the petitioner was given opportunity only to show-cause against the quantification of the duty and not the classification of the product. It is submitted that insofar as the classification is concerned, the authorities have concluded the issue.

2. I do not agree with learned Counsel. The relevant paragraph in the show-cause notice merely states that in view of the studies and analysis of the product as indicated in the notice, the authorities are satisfied that the product falls under sub-heading 3007.30 of the Central Excise Tariff Act. Thereafter, it refers to the visit by the officers of the petitioner's unit on 29.9.1992 and seizure of

certain goods. I understand that the notice is only mentioning that the authorities have prima facie come to the conclusion that the product falls under sub-heading 3307.30 and that the authorities have directed the petitioner to show cause why duty should not be paid as set out in the notice and why goods should not be confiscated. The petitioner is naturally entitled to show cause that the classification will be under sub-heading 3003.30 and not 3307.30. It is certainly open to the petitioner to say that it has not been given an opportunity to prove before the authorities that the proper classification is as per its declaration and not under sub-heading 3307.30. The petitioner is also entitled to refer to the reports and claim that those reports have been properly given. No doubt, reference is made to the reports in the show-cause notice and it is stated that they are based on the personal opinions of the Chemical Examiners. It is a matter which could be canvassed by the petitioner before the respondents when the petitioner appears in pursuance of the show-cause notice. I find that the petitioner is also given an opportunity to ask for a personal hearing before any adjudication is made and the petitioner while submitting its written explanation may express its wish to be heard in person. It is open to the petitioner to appear before the authorities and prove that the correct classification is as per the declaration and not as prima facie concluded by the authorities. Hence, I am not inclined to interfere with the notice and issue a writ against the respondents.

3. Learned Counsel for the petitioner places reliance on the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Madhumilan Syntex Pvt. Ltd. and Another*, . That was a case where the classification was modified without prior notice to the party concerned. The Apex Court held that it was not valid and before any modification was made, a show-cause notice should have been issued and an opportunity should be given. That case has no application to the present case.

4. Reliance has been placed on the judgment of the Allahabad High Court in *Ravindra & Co. v. Union of India* 1992 (40) ECR 60 (All). There the order was passed on the basis of the classification and that was challenged on the ground that no opportunity was given to the party concerned before the passing of the order. That order was set aside and the Court held that opportunity should be given to the party concerned. That judgment will have no application to the present case.

5. In the present case, the show-cause notice issued by the respondent is comprehensive enough to give an opportunity to the petitioner to prove that the proper classification is as declared by the petitioner in the declaration under Rule 174, and that there is no question of imposing duty as mentioned in the notice. In the circumstances, this writ petition fails and is dismissed.