
(1991) 08 AHC CK 0016
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1435 of 1990 and 1126 of 1991

S.S. Pharmaceutical (P) Ltd.

APPELLANT

Vs

Additional Collector, Central Excise

RESPONDENT

Date of Decision : 30-08-1991

Acts Referred:

Citation : (1992) 38 ECR 495

Hon'ble Judges : R.K. Gulati, J;A.P. Misra, J

Bench : Division Bench

Judgement

A.P. Misra, J.—Heard learned Counsel for the petitioner and Sri V.K. Singh learned Senior Standing Counsel appearing for Union of India.

2. By means of the present writ petition No. 1126 of 1991 and the other writ petition No. 1435 of 1990, both filed by the same petitioner, the petitioner has challenged the order dated 27.3.1991, Annexure IV to the writ petition No. 1126 of 1991 and the order dated 14.9.1990, Annexure-3 to writ petition No. 1435 of 1990. The main contention on behalf of the petitioner is that the petitioner company is not related to M/s Poonam and Company and M/s Kharbanda Drugs Corporation. In these impugned orders the authorities have held that they are related. The petitioner has raised a number of grounds contending that the said finding is not sustainable, and further raised the question of limitation and power of issuance of notice by the Assistant Collector, we find from the averments made in writ petition No. 1126 of 1991 that the show cause notice was issued earlier than the impugned notice, and the petitioner submitted price list and classification list before the Assistant Collector Central Excise, Allahabad for approval of the price list under the Central Excise Act and the Rules framed thereunder for not related persons. The petitioner-company further submits that earlier after enquiry and hearing on various dates the authority concerned was convinced that the company was not a related person to Poonam and Co. and Kharbanda Drugs Corporation and, thus, approved the price list on 22.11.1988. Against the said approved price list the Assistant Collector, Central Excise

preferred in appeal before the Collector Appeals (New Delhi) now Allahabad. The petitioner company also submitted objections against the said and the appeal is still pending before the Collector (Appeals).

3. The argument of the petitioner before us is that since in earlier proceedings the petitioner is held not related person, hence the finding by the authority in the impugned order to the contrary is not sustainable. However, we do not like to go into the merits of the contentions of the petitioner in the aforesaid two writ petitions. We find that as disclosed by the petitioner itself, the matter is pending before the Appellate Authority for consideration in the appeal filed by the respondent against the finding that the petitioner is not a related person. In the impugned order in the present petitions, it is held that the petitioner-company is related to the aforesaid two firms. It is not in dispute that the impugned orders are appealable under the Central Excises and Salt Act, 1944, as against the similar orders appeals have been preferred by the respondents. In view of this, it would be appropriate for the appellate authority to consider the matter in case the petitioner's appeals against the two impugned orders are filed within six weeks from today along with a stay application and waiver application. Recovery proceedings which we have stayed in writ petition No. 1436 of 1990 by order dated 30.11.1990, shall be operative for a period of eight weeks from today and shall be subject to the order passed on the waiver and stay application to be moved within specified time as indicated above. The appeals shall not be dismissed by the Appellate Authority being barred by time in case it is filed within the specified period as aforesaid, similarly the recovery proceedings as against the petitioner in writ petition No. 1126 of 1991 in pursuance to the impugned order dated 27.3.1991 shall remain stayed for a period of eight weeks from today provided the petitioner furnishes security for the same amount to the satisfaction of the respondent within one month, which may be other than cash or bank guarantee. This order shall also be operative only for a period of 8 weeks subject to the order passed on the waiver and stay application.

4. In case the applications for stay and waiver are filed along with the appeals as directed above, the appellate authority shall dispose them expeditiously taking into account all the facts and circumstances of the case.

5. Learned Counsel for the petitioner further urged that though by omission, he could not annex the copy of an order passed by its court nor could he state that the authority passing the impugned orders has also not complied with the directions issued by this Court earlier. In absence of any averment or material on record of these writ petitions, it would not be possible for us to effectively come to a conclusion either way. However, since we are directing the petitioner to file appeals before the appellate authority itself, it shall be open to the petitioner to take all such picas in the appeals as may be available to it under law, and, we have no hesitation that the appellate authority in case such grounds are raised, will also consider the same while disposing of the appeal/appeals.

6. Subject to the above directions, the writ petitions shall stand finally disposed

of.

7. A certified copy of this order may be issued to the petitioner if possible within 4 days on payment of requisite fee.