(1994) 07 AHC CK 0049

In the Allahabad High Court

Case No : Writ Petition No''s. 1044 and 1045 of 1983

Star Paper Mills Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 8(1)
Central Excises and Salt Act, 1944 — Section 35, 35B, 35C(3), 36

Citation : (1994) ECR 227 : (1994) 73 ELT 266

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, for the Appellant; V.K. Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

D.S. Sinha, J.—Heard Shri Bharat Ji Agrawal, learned counsel appearing or the petitioners and Shri S.M.A. Kazmi learned Additional Standing Counsel representing the respondents.

2. These two petitions raise and involve identical controversy and, as such, they are being disposed of by common judgment.

3. Civil Misc. Writ Petition No. 1045 of 1983 pertains to the demand of excise duty to the tune of Rs. 4,05,450.20 relating to the period between 1st April, 1976 and 28th April, 1976. Civil Misc. Writ Petition No. 1044 of 1983 relates to the demand of excise duty to the tune of Rs. 3,98,541.61 for the period between 1st April, 1977 and 4th May, 1977.

4. Notices under the erstwhile Rule 10 of the Central Excise Rules, 1944, hereinafter called the Rules, were issued to the petitioners raising the aforesaid demands. The petitioners objected to the demand and claimed exemption on the strength of the Government of India notification dated 1st March, 1973 issued in exercise of the powers under erstwhile Rule 8(1) of the Rules. The claim of the petitioners for exemption was turned down on the ground that the benefit of the

exemption granted to it was not passed on to the consumers, and the demands were confirmed by the Assistant Collector, Central Excise, Saharanpur, the respondent No. 4.

5. Aggrieved by the orders of the respondent No. 4, the petitioners preferred appeals u/s 35 of the Central Excises and Salt Act, 1944, hereinafter called the Act. The appellate authority, namely, the Collector (Appeals), Central Excise, New Delhi, the respondent No. 3, dismissed the appeals of the petitioners and confirmed the orders of the respondent No. 4.

6. Thereafter, the petitioners filed revisions under erstwhile Section 36 of the Act which were later on converted into appeals u/s 35B of the Act. The appeals of the petitioners were heard by the Custom, Excise and Gold (Control) Appellate Tribunal, New Delhi, the respondent No. 2, which dismissed the appeals by two separate orders. Hence these petitions.

7. The contention of Shri Bharat Ji Agrawal, learned counsel appearing for the petitioners, in the forefront, is that the orders of the Custom, Excise and Gold (Control) Appellate Tribunal, New Delhi, the respondent No. 2, rejecting the appeals of the petitioners u/s 35-B of the Act are invalid in as much as they suffer from infirmity of the lack of disclosure of reasons.

8. The appellate order dated 22-6-1983 passed by the respondent No. 2 u/s 35-B of the Act, which is the subject matter of challenge in Civil Misc. Writ Petition No. 1044 of 1983 reads as follows:

"CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL, New Delhi ED (SB) (T) A. No. 187/79-A

(Arising out of order No. 266-C.E./ARPI/KNP/78 dated 7-11-1978 passed by the Appellate Collector of Central Excise, New Delhi).

M/s. Star Paper Mills Ltd....Appellant

Saharanpur (Present Shri J.S. Kapil, Advocate)

Versus

Collector of Central Excise...Respondent

Meerut (Shri Mahesh Kumar, SDR)

ORDER

The issue involved in the present appeal is identical to one decided by us in Appeal No. 60-80-A dated 11-3-1983 in the case of Dr. Deck & Co. (India) Ltd., Pune v. Collector of Central Excise, Bombay. Subsequently, some other appeals have also been decided following the ratio of the above mentioned appeal. For the detailed reasons recorded in Appeal No. 60-80-A of 31-3-1983, we see no merit in the present appeal and dismiss the same.

Sd/- Sd/- Sd/- F.S. Gill) (D. N. Lal) (M. Gouri Shanker President Member (T) Murthy) Member (J)

Dated : 22nd June, 1983."

9. The order dated 22-6-1983 which is under challenge in Civil Misc. Writ Petition No. 1045 of 1983 read thus:

"CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL, New Delhi ED/ SB/(T) A.No. 111/78-A

(Arising out of Order No. 747-C.E./APPL/KNP/77 dated 15-5-1978 passed by the Appellate Collector of Central Excise, New Delhi.)

M/s. Star Paper Mills Ltd. ...Appellant

(Present-J.S. Kapil, Advocate)

Versus

Collector of Central Excise, ...Respondent

Meerut (Shri Mahesh Kumar, S.D.R.)

For the reasons recorded while disposing of appeal No. 187/79-A of the same appellants we dismiss the present appeal.

Sd/- Sd/- Sd/- (ES.Gill) (D.N.Lal) (M. Gouri Shanker President Member (T) Murthy) Member (J)

Dated : 22nd June, 1983."

10. The order dated 22nd June, 1983 challenged in Civil Misc. Writ Petition No. 1045 of 1983 by itself does not disclose any reason in its support. It merely refers to the reasons recorded while disposing of appeal No. 187/79-A. The reasons for disposing of appeal No. 187/79-A are contained in the order dated 22-6-1983 impugned in Civil Misc. Writ Petition No. 1044 of 1983 which has been reproduced above. From the perusal of the said order, it is apparent that the order disposing of the appeal No. 187/79-A also does not disclose any reason in its support, except making a reference of the decision in M/s. Dr. Deck & Co. (India) Ltd., Pune v. Collector of Central Excise, Bombay, and some other appeals. Reference of reasons recorded in appeal No. 68/80-A of 31-3-1983 has also been made in the order. It is not disputed that the petitioners were never communicated or apprised of the reasons recorded in the decisions referred to in the order dated 22nd June, 1983 passed in appeal No. 187/79-A.

11. Sub-section (3) of Section 35C of the Act obliges the Appellate Tribunal to send a copy of every order passed in appeal u/s 35B of the Act to the Collector of Central Excise and the other party to the appeal. It cannot be gainsaid that the order, communication whereof is contemplated u/s 35C(3) of the Act, has to be an order which contains reasons as contemplated by law notifying to the party

concerned as to why and on what grounds the order was made. The reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. (See: Union of India (UOI) Vs. Mohan Lal Capoor and Others, .

12. It is well settled that the requirement of giving reasons in support of the order by statuary functionary is a requirement of the principles of natural justice. It is equally well settled that if an order is passed in violation of any principle of natural justice, the same would be void.

13. Apparently, the impugned orders do not disclose any reason in their support. Shri S.M.A. Kazmi, learned Addl. Standing Counsel appearing for the respondents concedes that the orders of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, the respondent No. 2, are bad in law for non-disclosure of reasons and are liable to be quashed.

14. Ld. counsel for the parties submit that interest of justice would be served by quashing the orders dated 22nd June, 1983 by the respondent No. 2 and remitting the matter to it for a fresh consideration and disposal by a reasoned order.

15. For the foregoing reasons, the writ petitions are allowed, in part. The impugned orders dated 22nd June, 1983, appended to the writ petitions as Annexure ''10'' are quashed. The matter is remitted to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi the respondent No. 2, for fresh disposal of the controversy in accordance with law. Needless to say that the said respondent shall pass a detailed and reasoned order, after giving due opportunity to the parties concerned. There will be no order as to costs.