(1994) 01 MAD CK 0023

In the Madras High Court

Case No : W.A. No''s. 29 and 30 of 1994

Sundaram Clayton Ltd. APPELLANT

Vs

Superintendent of Central Ex., Madras RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 226

Citation : (1996) 82 ELT 460

Hon'ble Judges : K.A. Swami, C.J;Kumar Rajaratnam, J

Bench : Division Bench

Advocate : Shri Sriram Panchu, for the Appellant; Shri K. Jayachandran, Additional Central Government Standing Counsel, for the Respondent

Judgement

K.A. Swami, C.J.—These two writ appeals are preferred against the common order dated 29-11-1993 passed by the learned single Judge

in W. P. Nos. 20428 and 20429 of 1993.

2. As the appeals lie in a narrow compass, we have directed the Additional Central Government Standing Counsel to take notice for the

respondents. Accordingly, the said counsel has appeared. We have heard both sides.

3. The appellants have sought for quashing the show cause notice dated 30-8-1993 bearing O. C. No. 93/93 and also the trade notice dated 5-2-

1993 bearing No. 12/93 issued by the Additional Collector of Central Excise (Technical), Madras. The trade notice is issued on the basis of the

circular issued by the Board in File No. 261/76/2/88-CX. 8 (Circular No. 2/93, dated 12-1-1993). Under the show cause notice, the appellant

has been directed to show cause to the Assistant Collector of Central Excise, Madras II Division, as to why the goods mentioned in the show

cause notice should not have been removed under Rule 57F(4) and as to why a duty of Rs. 16,37,827/- should not be demanded for the ash and

residue and scrap removed by them from 1-2-1993 to 23-8-1993 under Rule 9(2) read with Section 11A of the Central Excises and Salt Act,

1944. It is also further stated that it is open to the petitioner/appellant to cause production of all evidence upon which it intends to rely upon or

seek support to its defence and mention whether it wishes to be heard in person, within a period of thirty days from the date of receipt of the

show-cause notice. Thus, the show-cause notice affords an opportunity to the petitioner/appellant not only to put forth its defence but also to

produce such evidence as it finds it necessary to prove or to support its defence. Therefore, it can be stated that the show-cause notice does not

decide anything and it only puts forth certain facts and invites the petitioner to file its objections and prove the objections. As far as Trade Notice

No. 12/93 is concerned, it is issued on the basis of Circular No. 2/93, dated 12-1-1993 issued by the Central Board of Excise and Customs.

According to the trade notice, hitherto partially processed material used to be considered under Rule 57F(2), but now they have decided to

withdraw the same and treat it as under Rule 57F(4) of the Central Excise Rules.

4. Learned single Judge has rejected the writ petition on the ground that it is open to the petitioner to put forth its defence to the show-cause notice

and the adjudicating authority has to decide the same in the light of the objections put forth by the petitioner.

5. Normally, the jurisdiction under Article 226 of the Constitution of India is not exercised in favour of a party who approaches this Court

challenging the show cause notice and it is only in exceptional cases, the writ petition is entertained and the validity of the show-cause notice is

gone into, because the party to whom the show-cause notice is issued has to file its objections and the adjudicating authority has to decide it. The

jurisdiction is not normally exercised because even after the adjudication, there is a right of appeal provided to the aggrieved party and thereafter

there is a second appeal to the Customs, Excise and Gold (Control) Appellate Tribunal; therefore, learned single Judge is justified in refusing to

exercise the jurisdiction under Article 226 at the stage at which the matter stands.

6. However, it is contended by learned counsel for the appellant that in the light of the trade notice dated 5-2-1993 which is issued pursuant to the

Board Circular No. 2/93, dated 12-1-1993, the Adjudicating Authority does not even consider as to whether Rule 57F(4) or Rule 57F(2) is

attracted to the case of the petitioner; therefore, in the event this Court is not inclined to exercise the jurisdiction, it should be made clear to the

Authorities, and a direction should be issued to them to consider all the contentions raised by the petitioner in the reply to the show-cause notice. It

is only to consider this contention, we had directed the learned Additional Central Government Standing Counsel to take notice and we have heard

him as well.

7. It is the trite position of law that whenever a party, to whom a show-cause notice is issued, puts forth his defence, the Authority which has

issued the show-cause notice, who is competent to decide it, is bound in law to consider all those objections and decide the same. In view of this,

we do not think it necessary to consider the contention urged by learned counsel for the appellant that aluminium dross, aluminium ash and

aluminium swart do not fall within the category of ""waste"" or ""scrap"" and it is also not sold or disposed of by the petitioner inasmuch as it is only

sent to another unit for converting it into an aluminium ingot, therefore, Rule 57F(4) is not attracted. This contention also can very well be decided

by the Adjudicating Authority. We are sure, even without our direction also, the Adjudicating Authority would have decided such a contention.

However, the learned counsel expressed an apprehension that normally it is not considered in many of such cases, we have considered it necessary

to issue a direction. Accordingly, we dispose of these appeals in the following terms :

(i) It is open to the appellant/petitioner to file objections to the show-cause notice within 30 days from today.

(ii) After such objections are filed, the Adjudicating Authority shall fix a date for hearing and production of evidence which the appellant/petitioner

considers necessary and then hear and decide the contentions raised by the petitioner.

(iii) The order passed by the learned single Judge stands modified accordingly.

Any observations made by the learned single Judge contrary to these directions, shall not be taken into consideration.

(iv) There will be no order as to costs.