
(1993) 11 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 1611 of 1983

Sunita Engineers and Fabricators Pvt. Ltd.

APPELLANT

Vs

Collr. of C. Ex. (A), Bom.

RESPONDENT

Date of Decision : 24-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 69 ELT 651

Hon'ble Judges : S.P. Kurdukar, J;S.M. Jhunjhunwala, J

Bench : Division Bench

Advocate : Shri D.A. Athawale, for the Appellant; Shri V.G. Rege, for the Respondent

Judgement

Kurdukar, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the orders dated 30th October, 1980 (Exhibit H) and 19th December, 1980 (Exhibit I) passed by the Respondent No. 2. The petitioner has also challenged the legality of the order dated 2nd February, 1983 (Exhibit M) made by the Respondent No. 1 rejecting petitioner's appeal on the ground of limitation.

2. In our opinion, both these prayers cannot be granted.

3. The petitioner is a Private Limited company and running a factory at Andheri-Kurla Road, Bombay. They manufacture sugar and chemicals Machinery, Industrial plant and Equipment. The petitioner was registered in the year 1975 under the Companies Act, 1956. It is a small scale Industry and got registered as Small Scale Industry with the Directorate of Industries and was allotted the Registration No. MH/GB/S-581. Since the petitioner did not pay excise duty a show cause notice on October 27, 1978 came to be issued for the period December, 1977 to August, 1978. It was alleged in the show cause notice that the petitioner cleared the goods without paying excise duty and without keeping sufficient balance in the personal ledger account. The petitioner showed cause. The Assistant Collector, after hearing the petitioner, by his order dated 6-6-1979

directed the petitioner to pay Rs. 1,19,199.30 towards excise duty and also imposed fine of Rs. 2000/-. The 2nd Respondent-Collector however reviewed the order of the Assistant Collector and by his order dated 29-4-1980 set aside the order of recovery of excise duty but imposed the penalty of Rs. 60,000/-. He however made an order regarding confiscation of the property namely land, building, machinery etc. giving option to the petitioner to redeem the same on payment of Rs. 1 lac (see order at Exhibit A). Against this revisional order passed by the Collector in a suo motu proceedings, the petitioners preferred a revision application to the Government of India. The Additional Secretary to the Government of India vide his order dated 25-4-1981 disposed of the revision in the following terms :

"Having regard to the gravity, Government further observe that under the circumstances of the case the petitioners deserve relief regarding the order of confiscation of land, building, plant and machinery as ordered by the Collector, which is accordingly set aside. Government see no reason to interfere with the order of the imposition of penalty of Rs. 60,000/-. The revision application is disposed of accordingly."

4. The Superintendent of Central Excise on October 30, 1980 and December 19, 1980 passed the detention orders (Exhibits H and I). Both these orders are passed pursuant to the order passed by Collector of Central Excise in the Revision Application No. 3 of 1980. The petitioner seeks to challenge the orders at Exhibit H and I (See prayer A). At this stage it may be stated that the petitioner was aware of the order passed by the Collector in Revision Application No. 3 of 1980 as well as by the Union of India, yet it has not chosen to challenge these two orders. The orders at Exhibit H and I are consequential orders which flow from the order passed by the Collector. Unless the orders passed by the Collector in the Revision Application No. 3 of 1980 and that passed by the Union of India in revision Application are challenged, it would not be possible for the petitioner to assail the detention orders at Exhibit H and I. In these circumstances, it is not possible to grant any relief to the petitioner as regards detention orders at Exhibit H and I.

5. Mr. Athawale, learned counsel for the petitioner, however, drew our attention to the order passed by the Assistant Collector for the subsequent period i.e. September, 1978 to show that the petitioner was in fact granted benefit of exemption notification issued on 15-7-1977. It is undoubtedly true that under the said order the Assistant Collector granted the benefit of exemption notification to the petitioner but that does not necessarily mean that the petitioner satisfied the conditions, under the notification of 1977 for the period December, 1977 to August, 1978. In his view of the matter the support sought to be taken by the petitioner from the order of exemption for the period September, 1978, cannot be upheld.

6. It was then contended by Mr. Athawale that the petitioner has annexed copy of the order passed by the Collector in the Revision Application No. 3 of 1980 and

the copy of the order passed by the Union of India on its Revision Application and since both these orders are before the Court, the Court may consider the validity and legality of these two orders in terms of prayer clause "G" which reads as under :

"For such further and other reliefs as the nature and circumstances of the case may require."

We are afraid such a request of the learned advocate cannot be accepted since it was necessary for the petitioner to challenge both these orders specifically in view of the fact that the same had a binding effect and in fact the petitioner was knowing about the same.

7. Thus, in our opinion, the petitioner does not make out any case to grant any relief as regards the two detention orders at Exhibit H and I and consequently, the petition is required to be rejected. In the result, the petition fails and the rule is discharged. In the facts and circumstances of the case there will be no order as to costs.