
(1995) 04 MP CK 0014
In the Madhya Pradesh High Court
Case No : L.P.A. No. 21 of 1995

Surya Agroils

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 226, 227

Citation : (1995) 59 ECR 442

Hon'ble Judges : R.D. Shukla, J;D. Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D. Verma, J.—This letters patent appeal under Clause 10 of the Letters Patent Act has been filed by the unsuccessful petitioner who had filed W.P. No. 1239/93 challenging the show cause notice issued to the appellant.

2. The learned Single Judge heard the matter on 15.3.1995 and disposed of the petition with the observations which are reflected in para 11 of the impugned order. It is reproduced here-in-below:

11. In the circumstances, I dispose of this petition with the directions as under:

(a) The aforesaid show cause/notice (Ann. P. 8) is not quashed but the petitioner is granted liberty to show cause and submit reply to the appropriate Authority within a period of one month from today. The petitioner shall be free to take all pleas and objections as are available under the law.

(b) The Appropriate authority shall consider the cause and reply and take appropriate decision as early as possible, in conformity with law, under intimation to the petitioner, by reasoned order.

(c) If the order turns out to be adverse to the petitioner, the petitioner shall be free to pursue appropriate remedy in that behalf.

The appellant feeling aggrieved by the said order has approached this court by way of filing L.P.A.

3. Few facts necessary to understand the controversy of the matter are mentioned herein below. The appellant, which is a duly registered Company under the provisions of the Companies Act, 1956, is engaged in the business of manufacturing Pasta foods. The said Pasta foods are packed in bulk, in loose as well as in unit containers of varying weights. The excise duty payable on both types of the packing is different. The respondents on coming to know that the appellant was engaged in clandestine removal of Pasta foods, put up in unit containers falling under sub-heading 1902.10 under the guise of Pasta foods as bulk in loose falling under sub-heading 1902.90 with intention to avoid the payment of Central Excise duty, issued show cause notice to it. The appellant's factory was accordingly inspected by the officer of the respondents and thereafter they have served a show cause notice to it on 31.3.1993 calling upon the appellant to file its appropriate reply and to show cause as to why the amount of excise duty be not recovered and penalty be not imposed on it. The appellant instead of filing an appropriate reply taking all objections available to it, straight way, approached the High Court under Articles 226/227 of the Constitution, challenging the said show cause notice.

4. As mentioned above the learned Single Judge after hearing both the counsels of the parties disposed of the petition with the observations which have already been reproduced above.

5. Shri Mathur learned senior counsel appearing for the appellant has strenuously argued before us and submitted that the said show cause notice dated 31.3.1993 is wholly without jurisdiction and in absence of jurisdiction, the appellant had no other alternative remedy available to it but to approach the High Court under the provisions of Articles 226/227 of the Constitution.

6. In furtherance of his contention, Shri Mathur has relied on decisions reported in Hindustan Electro Graphites Ltd. v. Union of India. 1990 (50), Jayant Vitamins Limited Vs. Union of India (UOI), and M. Koyakutty Vs. Collector of Customs and Central Excise and Others, to show that even show cause notices can be challenged in a writ jurisdiction provided the said show cause notice is without jurisdiction and lacks complete absence of jurisdiction.

7. There does not appear to be any dispute with regard to the ratio decided in the aforesaid cases. However, the recent view of the Apex Court is that if a show cause notice has been issued under any statute or Act, then for redressal of the grievances the aggrieved party should approach the form prescribed under the said statute or Act and a petition under Article 226 of the Constitution shall not be maintainable. For this we rely on the decisions of Union of India and others Vs. M/s. Maheswari Woollen Mills, , as also on State of U.P. and another Vs. Labh Chand, .

8. The recent judgment of our High Court which highlights the similar legal

position is reported in Birla Jute and Industries Ltd. v. Union of India and another 1993 M.P.L.J. 924. In this case the petitioner had also approached the High Court invoking the jurisdiction under Article 226/227 of the Constitution to challenge the show cause notice issued to it. The High Court while dismissing the petition directed the petitioner to approach the Collector Central Excise to contest the matter on merits.

9. Keeping all these decisions in view, in our opinion, the learned Single Judge has rightly disposed of the petition with the observations as mentioned above.

10. The contention of the learned Counsel for the appellant that the extended period of limitation as prescribed u/s 11A of the Central Excises and Salt Act shall not be applicable to the facts of the present case, can also be well agitated before the proper forum.

11. Thus, we are not inclined to admit this appeal and dismiss the same. However, the period of filing reply to the show cause notice as extended by the learned Single Judge by one month from 15.3.1995 has also expired and therefore, we extend the said period upto 30th May, 1995 and the appellant may take necessary steps of filing reply to the show cause notice and contest the matter on merit, if it so desires.

Thus the appeal is dismissed in limine without notice to the other side.