

(2000) 11 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 4672 of 1994

Tamil Nadu Khadi and Village Industries Board

APPELLANT

Vs

C.C.E.

RESPONDENT

Date of Decision : 27-11-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Income Tax Act, 1961 — Section 33(4)

Citation : (2001) 76 ECC 466 : (2001) 129 ELT 36

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : T. Ramesh, for the Appellant; K. Veeraraghavan, Addl. Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K. Raviraja Pandian, J.—The above Writ Petition is filed for the relief of calling for the records on the file of the second respondent herein in

Appeal No. E/189/90/MAS (Order No. 670/93), dated 27-10-1993 and for issuance of a writ of Certiorarified Mandamus to quash the order of

the second respondent in the Appeal dated 27-10-1993 and direct the second respondent to re-dispose the appeal on merits considering the

availability of Notification No. 175/86, dated 1-3-1986 issued under Rule 8(1) of the Central Excise Rules, 1944.

2. The case of the petitioner is that the petitioner - Tamil Nadu Khadi and Village Industries Board who have a workshop at Tirunelveli; that the

petitioners are engaged in the manufacture of wooden and steel furniture, as well as other articles of iron and steel; that prior to 1-3-1986, the

goods of the petitioners were classifiable under T.I. 68 CET and T.I. 40 (Articles of steel furniture); that the petitioners were not paying any duty

since they were entitled to exemption under Notification 85/85, dated 17-3-1985 read with Notification 212/86, dated 25-3-1986; that on 19-8-

1989, a show cause notice was issued by the Collector of Central Excise, Madurai - the first respondent demanding duty for the period from 1-4-

1988 to 23-2-1989; that the petitioner on 18-10-1989 filed objections and raised several grounds; that the petitioners also relied on Notification

No. 175/86, dated 1-3-1986 in defence that there is an exemption available in his favour and that has been rejected by the first respondent.

3. As against this the petitioner filed an appeal before the Appellate Tribunal. The Appellate Tribunal by its Order dated 27-10-1993 without going

into the merits of the case has simply rejected the claim on the ground that there was no pleading before the original authority and as such, their

claim as to the benefit of the notification cannot be taken note of by the Appellate Tribunal and dismissed the appeal.

4. The correctness of the said Order is now questioned in the present writ petition.

5. The learned Counsel Mr. T. Ramesh appearing for the petitioner has contended that of course it is true that this aspect of the matter has not

been specifically agitated before the original authority. However in the grounds of appeal they have taken the point as to the eligibility of the benefit

under Notification 175/86 and he also further contended that the very same Notification is the subject matter in an appeal before the very same

Tribunal and that Tribunal has taken a view which the Petitioner is pleading before the Tribunal but because of the only ground that they have not

taken this ground before the original authority their appeal has been rejected which is not sustainable in law.

6. Further the learned Counsel Mr. T. Ramesh relied on a decision in Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd.,

on the ground that the Appellate Authority when the materials are available on record even without pleading can go into the issue whether the

benefit of the Notification No. 175/86, dated 1-8-1986 is available or not and for the very same purpose, he also relied on a decision in Madura

Mills Company Limited v. Government of Madras and Anr. reported in Vol. 25, S.T.C 407.

7. On the other hand, the learned Counsel for the Department has contended that the petitioner is not vigilant and they have requested for filing an

affidavit taken the stand only after the expiry of three years period and on that ground alone, the petitioner has to be non-suited for the relief sought for.

8. I am not able to countenance the reasoning given by the Appellate Tribunal as well as the argument advanced on behalf of the Department to

sustain the Order of Appellate Tribunal. It is well settled that if the petitioners are entitled to the benefits of the notification even if they are not

specifically claimed for the benefit it has to be granted in a fiscal statute and further in a *pari materia* provision under the Income Tax Act u/s 33(4),

it was held by the Supreme Court thus :

The Appellate Tribunal is competent to pass such orders on appeal as it thinks fit. There is nothing in the Income Tax Act which restricts the

Tribunal to the determination of questions raised before the departmental authorities. All questions, whether of law or of facts, which relate to the

assessment of the assessee may be raised before the Tribunal. If for reasons recorded by the departmental authorities in respect of a contention

raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and

indeed they would be under a duty, to grant the relief. The right of the assessee to relief is not restricted to the plea raised by him.

The very same analogy would apply to the facts of the present case in all its force. The Division Bench of this Court has also taken a view in the

decision in Volume XXV Sales Tax Cases 407 thus :

If a Tribunal functioning under fiscal laws, while dealing with a contention raised before it, is of the view that it is not well-founded, yet it could

grant relief if it is satisfied that the assessee's stand is otherwise justified on other grounds not raised before, if it is indeed duty bound to grant such

a relief.

9. In view of the categorical pronouncement of the Supreme Court as well as the Division Bench of this Court. I am of the view that the Order

passed by the Appellate Tribunal is totally unsustainable and it is liable to be set aside and as such it is set aside and the matter is remitted back to

the authorities to consider the matter afresh on merits and pass orders within a period of four months from the date of receipt of the order. The

parties are at liberty to adduce any evidence or any further arguments also.

With this observation, the Writ Petition is allowed. However, there shall be no order as to costs.