(2013) 01 KAR CK 0218

In the Karnataka High Court

Case No : Writ Petition No. 2495 of 2011 (Excise)

TVS Motor Co. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:
Finance Act, 2004 — Section 91, 93

Citation : (2013) 295 ELT 42 : (2014) 45 GST 593

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Lakshmikumaran, for the Appellant; N.R. Bhaskar, Sr. CGSC, for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the impugned order dated 7-7-2010 Annexure W passed by the Joint Secretary to Government of India. Petitioner is a company registered under the Companies Act. Petitioner is engaged in manufacture of automobile goods. The petitioner manufactured the automobile goods in their factory premises at Mysore and the same was cleared to their place of business at Hosur on payment of excise duty and excise cess. Thereafter the petitioner exported the goods. Since the manufactured goods are exported the petitioner made a claim for rebate of excise duty and excise cess. The respondents have allowed the rebate of excise duty and rejected the claim for rebate of excise cess under the impugned order. Therefore the petitioner is before this court.

2. Heard arguments on both the side and perused the entire writ papers.

3. A reading of the impugned order specifies that the only ground on which the claim of the petitioner for rebate of excise cess was rejected is that the same do not find a place in the explanation I to the notification called as Notification under the Central Excise Rules, 1944.

4. A reading of explanation No. I of this notification specifies that duty for the

purpose of this notification means duties of excise collected under the following enactments;

Explanation I.--"duty" for the purpose of this notification means duties of excise collected under the following enactments, namely:

a. the Central Excise Act, 1944 (1 of 1944);

b. the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

c. the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

d. the National Calamity Contingent duty leviable u/s 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);

e. special excise duty collected under a Finance Act;

f. additional duty of excise as levied u/s 91 read with section 93 of the Finance Act, 2003 (32 of 2003);

g. Education Cess on excisable goods as levied u/s 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

h. The additional duty of excise leviable under clause 85 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law;

i. Secondary and Higher Education Cess on excisable goods leviable under clause (126) read with clause (128) of the Finance Bill, 2007, which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law.

In this explanation No. I there is no reference to automobile Cess Rules, 1984. The Cess Rules specifies that the words and expressions used therein and not defined but defined in the Central Excise Act and the Rules made thereunder shall have a meaning respectively assigned to them in that Act or Rules. Therefore learned counsel for the petitioner contends that the duty defined under the words ''Central Excise Act'' includes the levy of cess under the Automobile Cess Rules. Admittedly the Excise Duty Rules specifies the manner of levy, collection and refund of duty and they are applicable for the levy, collection and refund of cess also. In support of this contention learned counsel for the petitioner placed reliance on the following decisions.

i. Barnagore Jute Factory Co. and Others Vs. Inspector of Central Excise and Others,

ii. The Collector of Central Excise, Patna Vs. Tata Engineering and Locomotive

Co., Jamshedpur,

iii. Banswara Syntex Ltd. Vs. Union of India (UOI) and Others,

By order dated 30-4-2009 in SLP (Civil) No. 19864/2008, the Supreme Court affirmed the judgment of the Rajasthan High Court referred to above.

5. Per contra learned counsel for the respondents contends that in the notification under the Central Excise Rules, Automobile Cess Rules is not specified. Therefore the impugned order at Annexure W is in accordance with law. It is further contended that the object of levying duty is entirely different from the object of levying the cess. Allowing refund of duty and levying cess are to achieve the same object. Therefore the impugned order do not call for interference. Accordingly he supports the impugned order.

6. Heard arguments on both the sides and perused the entire writ papers.

7. A combined reading of the notification under the Central Excise Rules and Automobile Duty Rules specifies that the manner of levying, collecting and refund as applicable to the duty are applicable to the Automobile Excise Cess. This aspect of the matter is not considered in the impugned order.

8. In identical circumstances the Rajasthan High Court while interpreting the education cess levied under the excisable goods allowed rebate on cess though not covered under the notification for the relevant period. This view taken by the Rajasthan High Court is affirmed by the Supreme Court in SLP No. 19864/2008. Though these decisions were placed before the Joint Secretary the same are not considered under the impugned order. On this ground also the impugned order is liable to be set aside. For the reasons stated above, the following;

ORDER

i. Writ petition is hereby allowed.

ii. The impugned order dated 7-7-2010 Annexure W passed by the Joint Secretary to Government of India is hereby set aside.

iii. The matter is remanded to the Joint Secretary to Government of India, Ministry of Finance (Department of Revenue) for reconsideration in accordance with law as expeditiously as possible and in any event not later than 3 months from the date of receipt of copy of this order.

iv. All contentions are left open.

