

(1985) 09 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Special Appeal No. 268/86

Union of India (UOI)

APPELLANT

Vs

Surti Syntex Ltd.

RESPONDENT

Date of Decision : 17-09-1985

Acts Referred:

Central Excises and Salt Act, 1944 — Item 18III(i)

Citation : (1986) 10 ECC 317 : (1987) 10 ECR 186

Hon'ble Judges : S.S. Byas, J;Bhatnagar, J

Bench : Division Bench

Judgement

1. These special, appeals u/s 18 of the Rajasthan High Court Ordinance, 1949 are directed against an order of a learned single Judge of this Court dated May 14, 1985, by which the 18 writ petitions were allowed and the order of the Assistant Collector (Central Excise) was quashed and the Assistant Collector was directed to decide the matter in dispute afresh after giving the petitioners adequate opportunity of hearing.

2. The petitioners are manufacturers of cellulosic spun yarn. In the writ petitions filed by them, the contention raised on their behalf is that the blended product does not contain any man-made fibre of non-cellulosic origin. Till recently, duty was levied on their product treating it to be covered by item 18 III(i) of the Schedule annexed with the Central Excises and Salt Act, 1944. In the classification submitted by them before the Assistant Collector (Central Excise), they had shown their product as that covered by the aforesaid entry, on the ground that it does not contain any man-made fibre of non-cellulosic origin. The Assistant Collector (Central Excise), however, passed the impugned order treating the product of the petitioners as falling under item 18 III(ii) of the Schedule annexed with the Act. The order of the Assistant Collector was challenged on multiple grounds and one of them was that the impugned order was passed by him without hearing them. The stand taken by the Revenue is that the product of the petitioners contains man-made fibres of non-cellulosic

origin. As such, the product of the petitioners falls under item 18 III (ii) of the Schedule for the purpose of levying the duty. It was, however, not specifically denied that the petitioners were not heard before the impugned order was passed by the learned Assistant Collector. The learned single judge took the view that the question whether the product of the petitioners is covered by Clause (i) or Clause (ii) of item 18 III cannot be adequately decided without taking evidence in the form of affidavit or otherwise. He further held that the Assistant Collector neither heard the petitioners nor afforded an adequate opportunity to them before passing the impugned order and treating the petitioners' product as covered by item 18 III(ii) of the Schedule. According to the learned single judge, the Assistant Collector was a quasi-judicial authority and before passing the impugned order, he should have afforded adequate opportunity to the petitioners to be heard. The impugned order was, thus passed in violation of the principle of natural justice. The writ petitions were consequently allowed and the Assistant Collector was directed to decide the matter afresh after giving the petitioners adequate opportunity of hearing in the light of the observations made by him.

3. Similar writ petitions were filed at Jaipur Bench of this Court. One of them being Jaipur Polyspin Ltd. v. Union of India and Ors. (S.B. Civil Writ Petition No. 2134/83). This writ petition was decided on May 22, 1985 by Agarwal, J. He agreed with the view taken by the learned single Judge who decided the writ petitions and passed the order under these appeals. The Union of India went in appeal against the order passed at Jaipur Bench. The appeal was decided on July 29, 1985 by a Division Bench at Jaipur. It is D. B. Special Appeal No. 211 of 1985 (Union of India and Ors. v. Rajasthan Textile Mills and Ors.). The learned Judges of the Division Bench agreed with the view taken by Agarwal, J. However, certain clarification was added by the learned Judges.

4. We have heard Mr. J.P. Joshi, learned Counsel for the appellants and Mr. Paras Kuhad, learned Counsel for the respondents and perused the judgments passed by the learned single judge and the Division Bench at Jaipur.

5. The main grievance of the petitioners, which found favour with the learned single Judge, is that the order treating their product to be covered by item 18 III(ii) of the Schedule was passed by the Collector without hearing them or without affording an opportunity of hearing to them. Mr. Joshi could not satisfy us that any adequate opportunity was afforded to the petitioners by the Assistant Collector before he passed the impugned order. In the reply filed in some of the writ petitions, the appellants even admitted that the petitioners were not heard nor were they afforded any adequate opportunity of hearing before the impugned order was passed by the Assistant Collector. We agree with the view taken by the learned single Judge that the Assistant Collector (Central Excise) is a quasi-judicial authority and as such he should have heard or afforded opportunity of hearing the petitioners before he treated the goods to be falling within item 18 III(ii) of the Schedule. His not doing so is in violation of the principle of natural justice. The learned Judges of the Division Bench have already accepted the

contentions that the petitioners should have been heard before the order was passed by the Assistant Collector. We are in respectful agreement with the view taken by the learned Judges of the Division Bench at Jaipur. The learned single Judge was, therefore, justified in allowing the writ petitions.

6. The learned Judges of the Division Bench, however, made certain observations to clarify the position. It would be proper to make the same observations here in these appeals.

7. There being no cogent reasons, we decline to interfere with the order dated May 14, 1985 passed by the learned single Judge. However, apart from the direction given by the learned single Judge, it is also made clear that whatever bonds, sureties, bank guarantees or cash deposits already made by the respondents for clearing their goods the same shall remain in tact. For future, it is also made clear that the assessing authority shall be free to take appropriate action in accordance with the provisions of Central Excise Act or the Central Excise Rules and will be free to take appropriate proceedings for guaranteeing payment of excise duty which might be leviable against the respondents in case the goods are found to be chargeable to excise duty under tariff item 18 III(ii) of the First Schedule to the Central Excise Act.

8. The appeals are, thus, disposed of with the above observations, but with no order as to costs.