(1992) 07 MAD CK 0049

In the Madras High Court

Case No : W.A. No. 784 of 1992

Union of India (UOI) — APPELLANT

Vs

The Madras Vanaspathi Ltd. — RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Citation : (1993) 44 ECC 234

Hon'ble Judges : Kanta Kumari Bhatnagar, C.J;Venkataswami, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kanta Kumari Bhatnagar, C.J.—This appeal is directed against the judgment passed by the learned single Judge dated 4.2.1992. The petitioner-respondent herein was carrying on business of manufacturing Vanaspathi and Refined Oil. The point involved in this appeal is simple and that is, whether the credit earned by the respondents prior to 25.8.1989 when the Notification bearing No. 27/87 CE dated 1.3.1987 allowing Money Credit on the usage of minor oils in the manufacture of Vanaspathi falling under Sub-Head 1504 of the schedule to the Central Excise Tariff Act 5 of 1986 as amended by Notification No. 192/87 dated 12.8.1987 was in force can be declined by a subsequent Notification No. 39/89 CE (N.T.) dated 25.8.1989. The respondent was denied by the department the credit from 1.3.1987 to 25.8.1989. Being aggrieved by the act of the concerned authorities, the respondent filed the writ petition praying for the quashing of the Notification No. 39/89 dated 25.8.1989. The respondent has also filed a petition along with the petition to direct the appellant to allow it to avail the credit earned from 1.5.1987 to 25.8.1989.

2. The learned single Judge in the impugned Judgment discussed in brief the authorities on the point and he agreed with the principle enunciated by the Division Bench judgment of the Punjab & Haryana High Court in Amrit Banaspathi Co, Ltd. v. Union of India [C.W.P. No.11654 of 1989-Order dated 22.1.1990 - reported in [1990] 28 ECC 135 (P & H)] and the decisions in Dipak

Vegetable oil Industries Ltd. Vs. Union of India, and The Modern Mills Ltd. v. Union of India (19911) 35 ELT 148 (Kar) and held that the respondent was entitled to a right to utilise the credit earned by it in accordance with the scheme when the scheme was in force and prior to 25.8.1989.

3. Learned Counsel for the appellants has assailed the finding of the learned Single Judge on the ground that the rescinding of the earlier Notifications has retrospective effect and the respondent is not entitled to avail the benefit earned under the earlier Notification by virtue of the Notification dated 25.8.1989. The letter dated 11.9,1989 issued by the Superintendent of Central Excise, Villupuram is quite clear on the point. In that it is clearly stated therein that the earlier Notification dated 1.3.1987 was rescinded with effect from 25.8.1989. Learned counsel for the appellants referred to paragraph 6 of that letter which mentions as follows:-

For removal of doubts and difficulties in the matter, you are advised to approach this office along with relevant records and registers immediately without any hesitation.

According to the learned Counsel, the dispute should have been raised before the Superintendent of Central Excise as pointed out in that letter. We do not feel inclined to agree with the submissions so made because the position of law is that unless a particular Notification or Order or Circular is made effective retrospectively, it will be effective only prospectively. In that view of the matter, the learned Single Judge, was correct in holding that the respondent was entitled to utilise the credit earned by it up to 25.8.1989. The appeal has no substance and it is dismissed.

