

(2011) 04 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 14191 of 2000

United Bleachers Ltd.

APPELLANT

Vs

The Customs, Excise and Gold (Control) Appellate Hon'ble
Tribunal, The Commissioner of Central Excise and The
Superintendent of Central Excise

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Central Excise (Valuation) Rules, 1975 — Rule 4
Central Excises and Salt Act, 1944 — Section 11A, 35(G), 35(L)
Constitution of India, 1950 — Article 129, 323(A), 323(B)

Citation : (2011) 04 MAD CK 0196

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

**Advocate : C. Saravanan, for the Appellant; S. Thirumavalavan, for the
Respondent**

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The prayer in the writ petition is for issuance of writ of Certiorari to quash the order of the first Respondent -CEGAT, dated 11.1.2000.

2. The facts of the case lie in a narrow campus:

The Petitioner is engaged in the business of textile processing on job work basis. The Central Excise Department (hereinafter shortly called as the "Respondents department") issued six show cause notices to the Petitioner for different period claiming differential duty of excise. In the show cause notices, it was alleged that the Petitioner has collected processing charges in excess of the processing charges shown in the cost construction statements filed along with the price lists and has thus suppressed the facts and under declared the value of the processed cotton fabrics in the price lists filed and approved and has cleared the goods as per the details furnished in the annexure enclosed to the show cause notices. It was further mentioned in the show cause notices that short levy by way of

suppression of facts should be recovered from the Petitioner and therefore, the department issued the show cause notices by invoking the power u/s 11A of Central Excise and Salt Act 1944. The Petitioner submitted its reply to the show cause notices and the Deputy Commissioner of Central Excise by order-in-original dated 30.4.1997 rejected the stand taken by the Petitioner and confirmed the demand of excise duty. Aggrieved by the said order-in-original, the Petitioner preferred appeal before the second Respondent. The appellate authority by order-in-appeal dated 24.12.1998 confirmed the order of the original authority. Aggrieved by the order-in-appeal, the Petitioner preferred appeal before the first Respondent-CEGAT and the first Respondent by the impugned order dated 11.1.2000, confirmed the findings of the original authority as well as the appellate authority. Challenging the same, the present writ petition has been filed.

3. The learned Counsel for the Petitioner raised three contentions. Firstly, it is submitted that show cause notices were clearly barred by limitation and the first show cause notice issued by the department was for the period from 1.1.84 to 31.8.84 and the show cause notices subsequently issued were from the period much prior to 1980 and such issuance of show cause notices for the prior period is not permissible in law. Secondly, it is contended that the show cause notices did not propose to invoke the provisions of Central Excise (Valuation) Rules 1975 and the finding rendered by the original authority is beyond the scope of the show causes notices. Thirdly, it is contended that the period for which show cause notices were issued, are much prior to 1980 and it is well beyond the period of limitation prescribed under the Act. Therefore, show cause notices are without jurisdiction. Further, the learned Counsel would submit that there has been violation of the principles of natural justice and hence, the writ petition is the appropriate remedy.

4. Per contra, the learned standing counsel for the Respondents would submit that the writ petition itself is not maintainable, since the issue involved relates to a dispute regarding valuation of goods which were manufactured and if the Petitioner is aggrieved by the order of the Tribunal, the only remedy is to approach the Hon"ble Supreme Court in terms of Section 35(L) of the Central Excise Act and reliance placed by the Petitioner on the decision of the Hon"ble Supreme court reported in L. Chandra Kumar Vs. Union of India and others, is not applicable to the facts and circumstances of the present case, since the first Respondent Tribunal is not a Tribunal constituted under Articles 323(A) and 323(B) of Constitution of India, but it is a Tribunal constituted under Article 129 of the Constitution of India. Further, the learned Standing counsel placed reliance on the judgment of the Division Bench of this Court in The Maritime Collector, The Collector of Central Excise (Appeals) and The Government of India Vs. Madura Coats Limited Ambasamudram Mills, for the proposition that the writ petition is not the proper remedy.

5. On merits of the case, the learned Counsel for the Respondents by relying on

the averment contained in the counter affidavit, would contend that the findings rendered by the original authority as well as the appellate authority are perfectly valid and legal and valuation of the goods have to be ascertained only by applying the rules contained in Central Excise (Valuation) Rules 1975 and the stand taken by the Petitioner is wholly untenable. Further, the learned Counsel would submit that the Hon"ble Supreme court in its decision in M/s. Ujjagar Prints etc. v. UOI case, reported in 1989 (39) ELT 493 (SC) on the issue of valuation of goods produced on job work basis, made it clear that the assessable value of the processed fabric would be the value of the job work done plus the manufacturing profit and the manufacturing expenses whatever these may be which will either to be included in the price at the factory gate or deemed to be the price at the factory gate for the processed fabric and that the factory gate here mean the deemed factory gate as if the processed fabric was sold by the processor. Therefore, it is contended that the orders passed by the authorities below are fully justified and since there was suppression of facts, the department is not entitled to invoke Section 11(A) with respect to extended period and the show cause notices were rightly issued by the Superintendent and adjudicated by the Deputy Commissioner.

6. I have carefully considered the submissions made on both sides and perused the materials available on record.

7. Before proceeding to the facts of the present case, the first aspect of the matter, which has to be considered, is as to whether the writ petition is maintainable.

8. The department would contend that as against the order of the Tribunal, the Petitioner ought to have approached the Hon"ble Supreme Court by way of appeal u/s 35(L) of the Central Excise Act 1944 and without exhausting such remedy, the Petitioner cannot invoke the writ jurisdiction of this Court and it is impermissible.

9. On the other hand, the learned Counsel appearing for the Petitioner would submit that the writ petition is pending before this Court for several years and at this distant of time, the Petitioner should not be directed to approach the Hon"ble Supreme court.

10. Though the contention of the learned Counsel for the Petitioner at the first blush, appears to be convincing, on a closure examination, proves otherwise. The normal procedure adopted by this Court in the matters relating to availability of alternative remedy, cannot in strict sense, be made applicable to the facts of the present case. This Court has held that whenever a writ petition is admitted and is pending for several years, at the time of final disposal, the Petitioner should not be directed to avail alternative remedy provided under the Statute as it would cause great prejudice to the litigant and the writ court could decide the matter on merits. However, such principle cannot be applied to the facts of the present case, since u/s 35(G) of the Act, there is a specific embargo contained under the

Act for this Court to entertain appeals with regard to the dispute relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment. Therefore, this Court is of the firm view that it would not be justified for this Court to go into the aspect as regards the valuation of goods, since it would tantamount usurping power of the Hon''ble Supreme Court which cannot be done. Hence, on the question of maintainability, this Court has no hesitation to hold that the writ petition is not maintainable before this Court.

11. The learned Counsel for the Petitioner would submit that the original authority misdirected itself by applying the provisions of Central Excise (Valuation) Rules, when the same is not the allegation contained in the show cause notices. As noticed above, the allegation contained in the show cause notices is that the Petitioner has collected processing charges in excess of the processing charges shown in the cost construction statements filed along with the price lists and has thus suppressed the facts and under declared the value of the processed cotton fabrics in the price lists filed and approved and has cleared the goods. As per the Department, there was suppression of facts and therefore, invoked the power u/s 11(A) of the Act. It is seen from the reply to the show cause notices that the Petitioner who is in the business of textile processing in para 4.2 of the reply stated that Rule 4 of the Valuation Rules applies when the value of the excisable goods for delivery at the time of removal is not known, but value of such goods is ascertainable for delivery at any other time nearest to the time of removal of the goods under assessment. That part, the Petitioner has placed reliance on several Judgments regarding the valuation of goods and the manner in which, it is required to be done. Under such circumstances, the original authority had adjudicated the matter as regards considering the applicability of Valuation Rules and proceed to pass orders on merits. Therefore, there is no error on the part of the original authority in deciding the matter bases on the Valuation Rules. Consequently, the submission made by the learned Counsel for the Petitioner that the order-in-original proceeds entirely on different aspect than what was projected in the show cause notices, is not tenable.

12. On the question of limitation, it is noticed that the show cause notices were issued alleging that there has been suppression of facts. If the same is established, in terms of Section 11(A) of the Act, the department is fully justified in invoking the extended period of limitation. The authorities below have concurrently held that there has been suppression and therefore, the extended period of limitation is held to be inapplicable. The Tribunal has also confirmed the findings of the authorities below. Therefore, the contention raised by the Petitioner in this regard also does not merit acceptance.

13. As observed by the Hon''ble Supreme court in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, , that "where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of". This observation of the

Hon''ble Supreme court applies more strictly in tax matters, wherein the Hon''ble Supreme Court repeatedly held that the writ court should not slow in interfering in tax matters, when there is hierarchy of remedies provided by the statute. As referred to above, the only remedy available to the Petitioner is to approach the Supreme Court u/s 35(L) of the Act. Without resorting to such remedy, filing of the present writ petition before this Court cannot be entertained.

14. Hence, for the reasons stated above, it is held that the Petitioner has not made out a case for interference by this Court.

Hence, the writ petition fails and the same is dismissed. No costs.