(1991) 03 AHC CK 0128

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 100 of 1984

U.P. State Electricity Board — APPELLANT

Vs

Collector of Cus. and C. Ex. — RESPONDENT

Date of Decision : 12-03-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 8(2)
Constitution of India, 1950 — Article 12, 209, 310, 311, 36
Electricity (Supply) Act, 1948 — Section 5

Citation : (1992) 61 ELT 14

Hon'ble Judges : B.P. Jeevan Reddy, C.J;R.A. Sharma, J

Bench : Division Bench

Advocate : A.K. Yog, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

R.A. Sharma, J.—Petitioner, U.P State Electricity Board, (hereinafter referred to as the Board), was Constituted in 1959 u/s 5 of the Electricity (Supply) Act, 1948. The Board had established Electricity Fabrication unit with its headquarters at Naini (Allahabad) in 1975 for fabrication and galvanizing mild steel (i.e. angle iron etc.) required for erection of towers and transmission lines etc. The Central Excise and Customs authorities required the Board to pay excise duty on goods manufactured in its fabrication unit. The Board protested and made representations in connection therewith; but its plea was rejected by the Department by its order dated 5-9-1983. Officials of the Department of Central Excise had also seized fabricated steel, iron etc. Hence this petition.

2. Respondents have filed counter affidavit and the petitioner has filed rejoinder affidavit in reply thereto. We have heard the learned counsel for the petitioner and the learned standing counsel for the Department and the writ petition is being disposed of in accordance with the rules of the court.

3. Learned counsel for the Board has challenged the action of the respondents on two grounds, namely (i) goods produced by the fabrication units of the Board

have been exempted by notification issued by the Central Government and (ii) fabrication and galvanizing carried on in its unit does not amount to manufacture and as such no excise duty can be charged. Learned standing counsel has on the other hand tried to justify the action of the respondents.

4. Central Government by its Notification No. 57/75-C.E., dated 1-3-1975 has exempted goods falling under Item No. 68 of the First Schedule to the Central Excises & Salt Act, 1944 on certain conditions. This notification is reproduced below:

"In exercise of the powers conferred by Sub-rule (2) of Rule 8 of the Central Excise Rules, 1944 the Central Government hereby exempts all goods falling under Item 68 of the First Schedule to the Central Excises & Salt Act, 1944 (1 of 1944) and manufactured by factory belonging to any of the State Government for purpose declared by Parliament by law to be incidental to the ordinary functions of Govt. from the whole of the duty of excise leviable."

The aforesaid notification does not purport to exempt all the goods falling under Item 68. The exemption has been granted only to such goods which are manufactured by factory belonging to any of the State Govt. for the purpose declared by Parliament by law to be incidental to the ordinary functions of the Govt. The contention of the learned counsel for the petitioner is that the Board is a Department and part of the State Govt. of U.P. and as such goods manufactured by it in its unit have been exempted from payment of excise duty and in this connection he has relied on the definition of the "State" contained in Article 12 of the Constitution of India. Under this article not only the Government (the Government and Parliament of India and the Governments and Legislatures of States) but all local and other authorities within the territory of India or under the control of the Government of India have been included in the definition of the word "State". This definition includes within its ambit all constitutional and other authorities on whom powers are conferred by law. State Electricity Board constituted under the Electricity (Supply) Act, 1948 has been held to be a "State" within the meaning of Article 12 of the Constitution of India by the Supreme Court in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, . But every authority which is a State within the meaning contained in Article 12 of the Constitution of India does not necessarily mean that it is a Department or part of the Government. Corporations and statutory authorities are different from Government even if they are controlled and financed wholly or partly by the Government and it is on this basis that the employees of the corporations and statutory bodies were excluded from the benefit of the protection conferred by Article 311 of the Constitution. In Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., Supreme Court held that Hindustan Steel Ltd., which is a corporation, is not a Department of the Government and its employees were declared not to be entitled to protection of Article 311 of the Constitution. In Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, Supreme Court laid down that an authority or corporation is juristic person different from the

Government. In that case Heavy Engineering Corporation Ltd., which was a Government Company incorporated under the Companies Act and was wholly controlled and financed by the Central Government, was held not to be a Department of the Government. Juristic entities which are "State" within the meaning of Article 12 of the Constitution are not equivalent to the Government for all purposes as definition of "State" under Article 12 of the Constitution is limited in operation to Part III and IV of the Constitution. In this connection reference may be made to the decision of the Supreme Court in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, wherein it was observed as follows :

"It is also necessary to add that merely because a juristic entity may be an ''authority'' and therefore ''State'' within the meaning of Article 12, it may not be elevated to the position of ''State'' for the purpose of Arts. 209, 310 and 311 which find a place in Part XIV. The definition of ''State'' in Article 12 which includes an authority within territory of India or under the control of the Government of India is not limited in its application only to Part III and by virtue of Article 36 to Part IV, it does not extend to the other provisions of the Constitution and hence a juristic entity which may be ''State'' for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. That is why the decision of this Court in S.L. Aggarwal v. Hindustan Steel Ltd. 1970 (3) SCR 263 and other cases involving the applicability of Article 311 have no relevance to the issue before us."

5. Electricity Board, though a State within the meaning of Article 12 of the Constitution is not a Department of the State Government and as such cannot claim exemption under the aforesaid notification issued by the Central Government.

6. The question as to whether fabrication and galvanizing amount to manufacture so as to attract excise duty has not been decided by the respondents and the orders for charging excise duty have been passed on the assumption that fabrication and galvanizing are nothing but act of manufacture. In the absence of any decision on this question, we do not consider it proper to decide it at the first instance as it involves consideration of factual controversy for which the parties have taken before us divergent stand. Unless it is determined that the Board is manufacturing any item, the excise duty cannot be imposed.

7. The writ petition is accordingly partly allowed. Orders dated 5-9-1983, 24-11-1983 (Annexure V & XIII to the writ petition) are quashed. The respondents are directed to decide afresh the question as to whether fabrication and galvanizing carried on by the Board in its fabrication unit amount to manufacture so as to attract the liability of the Board to pay excise duty after giving reasonable opportunity of being heard to the Board as far as possible within three months. Orders so passed shall be communicated to the petitioner. In view of the facts and circumstances of the case there shall be no orders as to costs.

