(1993) 09 MP CK 0020

In the Madhya Pradesh High Court

Case No : M.P. 286/93

Varun Industries APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 20-09-1993

Acts Referred:

Citation : (1993) 44 ECC 243 : (1993) 68 ELT 722

Hon'ble Judges : V.S. Kokje, J;R.D. Shukla, J

Bench : Division Bench

Advocate : V.K. Jain, for the Appellant; B.G. Neema, for the Respondent

Judgement

1. This petition involves a short point and in view of the fact that the return has also been filed, it was heard finally and is being disposed of by this order finally.

2. The petitioners'' grievance is that they have been issued notices Annexures B, C, D and E without specifying as to what was the scope of the enquiry and what was the purpose of the enquiry in which they were called upon to participate. According to the petitioners they will be seriously prejudiced if this Court does not interfere at this stage because the respondents are proceeding on the basis that the petitioners carry on manufacturing process and are manufacturing excisable goods whereas it is not so.

3. In response to the notice, by Annexure-F the petitioners have had their say. They have raised certain preliminary objections on the basis that the product manufactured being not excisable, the petitioners are not liable to any duty or penalty. The respondents on the other hand contend that even for deciding whether the petitioners carry on manufacture of excisable goods or not they have jurisdiction to issue notice to the petitioners calling upon them to produce documents and give statements.

4. Having heard the learned counsel and having perused the record, we find that the respondents have not specified the purpose of the enquiry during which notices were issued. The apprehension of the petitioner that the issue of the

product manufactured by them being not excisable has been fore-closed and the respondents are proceeding on the basis that the product manufactured by the petitioners is excisable cannot be said to be ill-founded. It was incumbent on the respondents atleast after the preliminary objection as to the applicability of the Central Excises & Salt Act to the product of the petitioner was raised to specify whether the question of the goods being covered under the Act or not is still open or they have made up their mind about the goods being covered by the Act and were proceeding to assess the extent of evasion of duty. We, therefore, find necessary to pass directions in this regard.

5. It would be in the interest of justice to dispose of this petition by directing that the respondents shall first decide after such enquiries they deem fit, as to whether the goods produced by the petitioners are exigible to Excise duty and are covered by the Central Excises & Salt Act. For this purpose the respondents shall be entitled to get the documents produced and statements recorded in accordance with law. The respondents shall proceed to assess the evasion of duty only after they first decide the preliminary objections of the petitioner contained in letter dated 29-12-1992 (Annexure-F) addressed to the Dy. Collector, Central Excise, Manik Bagh Road, Indore by the petitioner Company and proceed further only if they come to the conclusion that the petitioners carry out a manufacturing process and the goods manufactured are covered by the Central Excises & Salt Act.

6. With these observations, this petition is disposed of. There shall be no orders as to costs.

