
(1992) 08 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 737 of 1992

Vidarbha Veneer Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 173B

Citation : (1992) 43 ECR 84 : (1992) 62 ELT 712

Hon'ble Judges : M.B. Ghodeswar, J;H.W. Dhabe, J

Bench : Division Bench

Advocate : Shri V.C. Daga and Mr. M.L. Lahoty, for the Appellant; Shri M.G. Bhangde, for the Respondent

Judgement

H.W. Dhabe, J.—Parties by Counsel. Rule heard forthwith.

2. The learned Counsel for the petitioner has urged before us that the order dated 10-3-1992 passed by the learned Assistant Collector of Central Excise, Division No. 1, Nagpur i.e. the respondent No. 3 modifying the classification list on the basis of the earlier order passed by him in F. No. V(44)3-149/86/CVC dated 28-2-1992 is illegal and contrary to the principles of natural justice because as required by Rule 173(B) of the Central Excise Rules, he had not made any enquiry and had not given any opportunity to the petitioner of being heard in the matter. Further, he has urged that the aforesaid previous order of the Assistant Collector dated 28-2-1992 is stayed by the Collector (Appeals) by his interim order dated 3-8-1992.

3. The learned Counsel for the Department has urged before us that there is an adequate remedy of appeal available to the petitioner, particularly when in an identical matter viz. W.P. No. 949 of 1992, this Hon"ble Court by an order dated 29-6-1992 had relegated the petitioner to the remedy of appeal. The learned Counsel for the petitioner has submitted before us that the said petition was in respect of classification list prior to the amendment of relevant entry by Finance Bill of 1992. This is also clear from the classification list itself which is to be

effective from 1-3-1992. On merits, it is clear that no hearing was accorded to the petitioner before the classification list in question was modified by the respondent No. 3. Even no show cause notice was given to the petitioner in that regard. Since the principles of natural justice are violated, we do not think that this is a fit case to relegate the petitioner to the remedy of appeal.

4. We, therefore, allow the instant writ petition and set aside the impugned order of the respondent No. 3, dated 10-3-1992 and direct him to pass a fresh order after giving show cause notice to the petitioner and after giving him an opportunity of being heard. The Assistant Collector shall pass the order within two months from the date of this order. Rule made absolute in the above terms. No costs.