
(1992) 11 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1372 of 1990

Vikas Industrial Gases Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 17-11-1992

Acts Referred:

Central Excise Rules, 1944 — Rule 173B, 8(1)

Citation : (1993) 64 ELT 396

Hon'ble Judges : M.P. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.P. Misra, J.—In view of the exchange of affidavits, the present petition is being disposed of finally at the stage of admission in accordance with the Rules of the Court.

2. We have heard the learned counsel for the parties.

The petitioner seeks quashing of notice dated 3rd August, 1990/3rd November, 1990 (Annexure 13 to the petition) and further the demand notice dated 12th September, 1990, 21st September, 1990 with corrigendum dated 15th October, 1990 (Annexures 14, 15 and 16 respectively to the writ petition). According to the case of the petitioner since last 20 years, the Government of India has been giving exemption from Central Excise Duty under Rule 8(1), Central Excise Rules, 1944 by issue of notification in order to boost the production of the SSI units. The notification was issued time and again in the past. The petitioner has started its production since 13th March, 1984 and the relevant concessional notification applicable to the petitioner-unit then was Notification No. 83/83-C.E., dated 1st March, 1983. Similarly, for the subsequent year 1984-85 it was covered by Notification 85/85-C.E., dated 17th March, 1985. Thereafter, on 1st March, 1986, Notification No. 175/86-C.E. was issued granting exemption to certain excisable goods specified therein. The petitioner continued to claim exemption even under

this notification. Thereafter, by notification dated 30th October, 1987, the aforesaid 1986 notification was amended whereby only the units producing specified goods in the factory and registered with the Director General Technical Development were excluded from the purview of exemption from excise tariff. On account of this, the petitioner started paying full excise duty in the year 1988-89 and filed classification list accordingly. This was according to the petitioner, on account of wrong interpretation given by the Superintendent, Central Excise who duly informed the petitioner's representative that the petitioner is not entitled to claim exemption/concession in view of the 1987 notification. However, realising this mistake later on 7th October, 1989 the petitioner immediately filed the revised classification list on 8th October, 1989, claiming exemption under the aforesaid notification dated 1st March, 1986, as amended till that date. Even this classification list, submitted by the petitioner, was duly approved by the respondent No. 2 after detailed investigation and inquiry on 30th April, 1990. Even for Assessment Year 1990-91 the petitioner continued to pay concessional excise duty claiming exemption/concession under the aforesaid 1986 amended notification. However, Assistant Collector, Central Excise, served upon the petitioner a show cause notice dated 31st August, 1990/30th September, 1990 as to why classification list effective from 8th October, 1989, and 1st April, 1990, which was submitted by the petitioner and approved by the respondent No. 2 under Rule 173B cannot be modified. The notice does recite that the classification lists were got approved by the petitioner by misrepresentation of fact. The case of the petitioner is that at no stage there was any misrepresentation of fact by the petitioner in getting the lists of goods approved as aforesaid nor there is anything stated even in the show cause notice, and thus the show cause notice is without jurisdiction. The respondent authority can only recall, modify or cancel the approved list only on the ground of misrepresentation, concealment or fraud and that not being his case, the impugned notice is without jurisdiction.

3. On behalf of the respondents, it has been contended that the show cause notice was rightly given to the petitioner as petitioner was not entitled for any benefit of Notification No. 175/86-C.E., dated 1st March, 1986 after its amendment vide Notification No. 174/89-C.E., dated 1st September, 1989, and therefore they are required to pay full rate of duty from 1st September, 1990, onwards. Even in the counter-affidavit it has been averred that the classification was approved by the respondent on the basis of information filed by the petitioner. However, since the petitioner is not entitled for any benefit under the aforesaid notification as amended and thus benefit granted to the petitioner earlier is rightly being recalled. They have also stated, in fact, the show cause notice has given to him an opportunity and thus there is no question of any violation of principles of natural justice.

4. Though in this case an attempt initially was made regarding the interpretation of the word "availing" used in paragraph 4(b) of the notification dated 1st March, 1986 as amended on 1st September, 1989, but since we are deciding this case

on a short point it is not relevant for us to go into that question. The only question we are adverting in this case is whether the concerned respondent-authority had any jurisdiction to issue a show cause notice for modifying the approved list by it earlier on the facts and circumstances of this case. In the long counter-affidavit, we do not find any paragraph specifying the factual misrepresentation made by the petitioner in obtaining for approval of the list as aforesaid. The only ground in the counter-affidavit which has been spread in various paragraphs and urged by the learned Standing Counsel for the respondents is that as per amended notification the petitioner is not entitled for the exemption granted to it earlier. Thus, there is nothing on the record to record a finding on the basis of averments in this writ petition that the petitioner has in any way misrepresented, concealed any fact or committed fraud for obtaining the aforesaid approval of list of his goods as aforesaid. In fact, the petitioner has specifically averred in paragraph 12 of the writ petition that the list submitted by the petitioner was duly approved by the respondent No. 2 after detailed investigation. In the counter affidavit there is no denial of this fact. What is stated in reply is that the approval was on the basis of information filed by the petitioner but nothing to the contrary has been pointed out before us or in the counter-affidavit, which would make any information by the petitioner to come within the meaning of misrepresentation.

5. On the other hand, we find from the records that at the time of granting approval of the classification list the Assistant Collector sought clarification from the petitioner and the petitioner submitted two letters dated 9th April, 1990 and 16th April, 1990 (Annexures 20 and 21 respectively to the writ petition). It is significant that the said letters refer both amendments dated 30th October, 1987 and 1st September, 1989, as aforesaid, and set up a case that it does not affect the petitioner's right for the availment of exemption under notification dated 1st March, 1986. After receipt of the aforesaid letters the Assistant Collector accepted the petitioner's contention and thus thereafter granted approval on 30th April, 1990, of the classification list from 8th October, 1989 to 1st April, 1990. Thus, the aforesaid approval was granted after examining the relevant notifications by the respondent No. 2. It is not a case whether any notification has come subsequent to the approval of the list and in case it affects such an approval there might be a case where question could be raised that the approval earlier became erroneous on account of subsequent notification in case it is retrospective, to which we are not concerned, nor we are adjudicating this in the present case. We find, even scope of various notifications was all placed by the petitioner before the respondent No. 2 who granted approval. Thus, on the facts of this case, it cannot be said that the petitioner misrepresented any fact in obtaining the approval earlier.

6. In Ajanta Iron and Steel Company Pvt. Limited Vs. Union of India and others, it was held that the classification list once approved cannot be reviewed by the same or any other Assistant Collector. Rule 173B provides for filing classification list and Assistant Collector is required to approve only after such inquiry as he

deems fit, which is an important part of the process of assessment. He has to apply mind before according approval. It is also open to the Assistant Collector, after making inquiry, to make appropriate suitable addition, modification in the classification list, but once he approves the same he cannot review the same subsequently, unless of course the approval is obtained by fraud, misrepresentation or concealment of fact.

7. In view of the aforesaid findings, the impugned show cause notice is liable to be quashed being unsustainable. Any demand as a consequence of the said show cause notice is also unsustainable and accordingly we direct the respondent-authority not to recover the same from the petitioner in consequence thereof. We would not like to enter into the any other questions raised in this petition but this is without prejudice to the right of the parties to raise it in case it arises in other proceedings in accordance with law.

8. With the aforesaid observations, this writ petition is allowed and the notice dated 3rd August, 1990/3rd November, 1990 (Annexure 13 to the petition) is hereby quashed, costs on parties.