
(1983) 11 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petitions No"s. 1784 to 1787 of 1983

Virendra Lime Company

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-11-1983

Acts Referred:

Central Excises and Salt Act, 1944 — Section 23(1), 23(3), 24, 35, 35A
Constitution of India, 1950 — Article 226

Citation : (1984) 3 ECC 351 : (1985) 22 ELT 690

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Advocate : P.C. Jain, for the Appellant; B.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

N.M. Kasliwal, J.—All the petitioners in these writ petitions have sought the quashing of the Trade Notice No. 30/83-C.E. (I. Liment), dated 1st June, 1983, issued by the Additional Collector, Central Excise and Customs Collectorate, Jaipur, and the summons No. C.E. 20/Liment/Lime S/83/1180, dated 13th August, 1983, issued by the Superintendent, Central Excise Range, Rural I, Kota. The petitioners also prayed that the product "liment" or "ashmoh" or "sagol" be declared not as a cement and falls under Tariff Item No. 68 and is exempted vide Notification No. 105/80/C.E., dated 19th June, 1980. It has also been prayed in the alternative that if the said item is regarded as "sagol" or "ashmoh" then it is exempted from the levy of Central Excise under the Tariff Item No. 23(2) by virtue of Notification No. 5/70/C.E., dated 31st January, 1970, or Notification No. 14/79/C.E., dated 27th January, 1979.

2. The petitioners have filed these writ petitions in view of the fact that the Superintendent, Central Excise, Rural I Range, Kota, had issued an order, annexure 5-Q, dated 21st January, 1983, taking the view that the above items were covered under Tariff Item No. 23 of the First Schedule to the Central Excises and Salt Act, 1944. In the above letter, it was mentioned requesting the

petitioners to file the classification list within two days so that the same could be forwarded to the Assistant Collector, Central Excise, Kota, for his orders with regard to classification. The case of the petitioners is that they have filed classification list but it would be futile as the Additional Collector by order dated 1st June, 1983, annexure 2, has already issued a trade notice to the effect that "liment" merits an appropriate classification under Item No. 23(2) of the C.E.T. and not Item No. 68 of the C.E.T. In view of the above trade notice issued by the Additional Collector the apprehension of the petitioners is that the Assistant Collector will be bound by such trade notice and will definitely hold that the product "liment" produced by the petitioners will be classified under Item No. 23(2) of the C.E.T. and not under Item No. 68 of the C.E.T. It is further submitted by the learned counsel for the petitioners that on an earlier occasion when the matter was referred to the Central Board of Excise and Customs, it was decided by the Board vide its Order No. 1/16/64-CX. VII, dated 24th January, 1964, that the "hydraulic cement" is not leviable to duty under Item No. 23 of the tariff. It is further pointed out that the Collector (Appeals), Central Excise, Delhi, also vide its order dated 2nd May, 1981, has held that the product of the company is not covered under Tariff Item No. 23 but squarely falls under Tariff Item No. 68. It is, thus, contended that when the Central Board of Excise and Customs as well as the Collector (Appeals) have already held that the product is not covered under Tariff Item No. 23 but falls under Item No. 68, there was no further question of taking any different view by the department. It is also contended that the Assistant Collector, though bound by the decision of the Collector (Appeals), but in the present state of circumstances when the trade notice has been issued by the Additional Collector on 1st June, 1983, will not take a different view and will act in accordance with trade notice issued by the Additional Collector. Reliance is placed on *Orissa Forest Corporation Ltd. v. Assistant Collector of Central Excise-1982 E.L.T. 875*; *Madras Rubber Factory Ltd. v. Union of India-1981 E.L.T. 804*; *Madras Rubber Factory Limited v. Union of India-] 979 E.L.T. 173*; *Orient Paper Mills Limited v. Union of India-1978 E.L.T. 328* and *Madras Fertilisers Limited v. Assistant Collector of Central Excise, Madras-1981 E.L.T. 194*.

3. On the other hand, it was contended by Mr. Gupta, learned counsel for the Union of India, that the Assistant Collector, while passing an order of assessment in his judicial capacity, is not bound by the trade notice issued by the Additional Collector. It is further contended that the assumption made by the petitioners in this regard that the Assistant Collector would not decide the case judicially and in an independent manner is erroneous. It is further contended that there is a hierarchy of the appellate authorities under the Excise Act and ultimately there is a provision u/s 35G to state a case to the High Court in case any question of law arises. In these circumstances the petitioners should approach the Assistant Collector and get a decision and thereafter, if they are aggrieved, they should approach the Collector (Appeals) and the Tribunal as the case may be. Reliance is placed on *Ambika Mata Yarn Manufacturing Co., Baroda v. Superintendent,*

4. I have given my careful consideration to the arguments advanced by the learned counsel for both the parties and have perused the various provisions contained in the Central Excises Act. It is, no doubt, true that a trade notice has been issued by the Additional Collector on 1st June, 1983, taking the view that "liment" merits an appropriate classification under Item No. 23(2) of the C.E.T. and not under Item No. 68 of the C.E.T., but this is the view taken by the Additional Collector on the administrative side. I am clearly of the view that the Assistant Collector while deciding the matter as a statutory authority under the provisions of the Central Excise Act is not bound by administrative instructions or trade notice and is free to decide the matter in a judicial manner. The petitioners are entitled to put forth their case before the Assistant Collector that the matter is already decided by the Central Board of Excise and Customs and then at is for the Assistant Collector to consider and decide whether the earlier View or notification issued by the Central Board is how far relevant and binding in the present case. There is a complete machinery provided under the Central Excise Act for challenging an order of assessment. An appeal against an order of the Assistant Collector is provided to the Collector (Appeals) u/s 35. u/s 35A the Collector (Appeals) is required to decide the appeal after giving an opportunity of hearing to the appellant. Thereafter u/s 35B any person aggrieved by an order of the Collector (Appeals) u/s 35A can file an appeal to the Appellate Tribunal. u/s 35C the Appellate Tribunal has full power to confirm, modify or annul the decision or order appealed against or may refer the case back to the authority which passed such decision or order. Thereafter there is a further provision u/s 35G for referring a case to the High Court on any question of law arising out of the order of the Appellate Tribunal. Thus, there is a complete hierarchy of appellate authorities provided under the Act and there is a complete machinery to challenge any order of assessment passed against the assessee. In view of the circumstance when an adequate and efficacious remedy is provided to the petitioners they are not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. In a recent decision their Lordships of the Supreme Court have taken the same view in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, In the above case it has been observed as under :

"In the instant case against the order of assessment made by the Sales Tax Officer under the Orissa Sales Tax Act the petitioners, assessee, can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under Sub-Section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer further appeal to the Tribunal under Sub-section (3) of Section 23, and then ask for a case to be stated upon a question of law for the opinion of the High Court u/s 24. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition

under Article 226 of the Constitution. It is now well-recognised 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."

5. I see no force in the contention of Mr. Jain, learned counsel for the petitioners, that it would be a futile exercise and multiplicity of proceedings in case the petitioners are resorted to the machinery of going to the Assistant Collector and thereafter to the Collector (Appeals) and to the Tribunal when the matter is already concluded by the notification issued by the Central Board of Excise. The Assistant Collector is the competent authority to decide as to under what classification item the particular commodity falls and to pass an order of assessment on that basis. The question whether the commodity produced by the petitioners falls under the item cement or not, is a mixed question of fact and law and much depends upon the facts and materials which would be produced by the petitioners before the assessing authority. Thus, taking in view the entire facts and circumstances of these cases I am clearly of the view that these writ petitions are premature and the petitioners have adequate and efficacious alternative remedy and are not entitled to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution.

6. The writ petitions, accordingly, fail and are hereby dismissed.