(1967) 09 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 800 of 1963

Wintex Mills APPELLANT

Vs

N.C. Kandola, Assistant Collr. of Ex, Baroda RESPONDENT

Date of Decision : 02-09-1967

Acts Referred:
Central Excise Rules, 1944 — Rule 198(1), 96(M), 96K(3)

Citation : (1967) 09 GUJ CK 0006

Hon'ble Judges : P.N. Bhagwati, J;N.M. Miabhoy, J

Bench : Division Bench

Advocate : K.A. Daboo and A.H. Mehta, for the Appellant; K.H. Kaji and B.R. Sompura, for the Respondent

Judgement

Bhagwati, J.—This petition challenges the validity of certain proceedings irritated by the first respondent by issuing a notice to the petitioners

to show cause why penalty should not be imposed upon them for breach of Rules 96K(3)(a) and 198(1) of the Central Excise Rules and art silk

fabric in respect of which the breaches are alleged to have been committed by them should not be confiscated under Rule 96(M) of the Central

Excise Rules. The facts giving rise to the petition are few and may be briefly stated as follows :

The petitioners are engaged in manufacture of art silk fabrics and for the purpose of manufacture they have a factory in Surat. On 6th August, 1960

the officers of the Central Excise Department visited the factory for the purpose of inspection and according to them it was found that the

petitioners had not maintained proper accounts in Form R.G. 18 as required by Rule 95K(3)(a). The petitioners also at the time of the inspection,

according to the officers of the Excise Department, voluntarily obstructed or offered resistance to or impeded the officers in the discharge of their

duty and were therefore, guilty of contravention of Rule 198(1). The Superintendent of Excise, Surat, thereupon issued a notice to the petitioner to

show cause why penalty should not be imposed upon them for breaches of Rules 96K(3)(a) and 198(1) and art silk fabric in respect of which the

breaches were alleged to have been committed should not be confiscated under Rule 96(M). Then petitioners filed a written statement in reply to

the show cause notice and the second respondent after hearing the petitioners passed an order dated 6th March 1961 holding that the petitioners

were guilty of contravention of Rules 96K(3)(a) and 198(1) and directing that the petitioners should pay a penalty of Re. 1/- for contravention of

Rule 96K(3)(a) and a penalty of Rs. 1,000/- for contravention of Rule 198(1) and art silk fabric in respect of which the breaches were committed

by the petitioners should be confiscated or in lieu of confiscation a fine of Rs. 5,000/- should be paid by the petitioners. The petitioners being

aggrieved by this order passed by the second respondent preferred an appeal to the Central Board of Revenue. One of the contentions raised in

the appeal before the Central Board of Revenue was that the rule of natural justice had been violated by the second respondent in that the second

respondent had relied on certain documents without supplying copies to the petitioners and without giving an opportunity to the petitioners to

render their explanation in regard to them. This contention was accepted by the Central Board of Revenue and the Central Board of Revenue

passed an order dated 10th October, 1961 vacating the order of the second respondent impugned in the appeal. Since the determination of the

controvercy between the parties in this petition turns almost entirely on the true construction of this order passed by the Central Board of Revenue,

it would be desirable to set it out in extension. That order ran as follows :

Order

The Central Board of Revenue have carefully considered all the points raised by the appellants in the appeal and at the time of personal hearing

granted to them. The appellants contend that the principle of natural justice were not followed by the Collector while adjudicating the case in so far

as that certain documents relied upon by him for adjudication purposes were not supplied to the appellants, for putting up their defence. The

Central Board of Revenue agree that there is force in this contention. They accordingly direct that without prejudice to the merits of the case the

order passed by the Collector shall be vacated"".

2. These were the terms in which the order as received by the petitioners was couched but as pointed out in the affidavit filed in reply to the

petition the order received by the Collector of Central Excise contained a note which was not to be found in the order supplied to the petitioners

that the record of the case would be returned in due course with a letter which was being issued separately for readjudication of the entire matter.

The Central Board of Revenue thereafter issued a letter to the second respondent asking the second respondent to take proceedings for

readjudication of the case. The first respondent thereupon issued to the petitioners a fresh show cause notice which was in the same terms as the

show cause notice issued earlier by the Superintendent of Excise, Surat. This show cause notice was based on the same facts as the previous show

cause notice and sought to hold the petitioners liable for the same offences for which they were sought to be held liable under the previous show

cause notice. The petitioners thereupon filed the present petition challenging the validity of this show cause notice issued by the first respondent.

3. The main ground on which the petitioners challenged the validity of the impugned show cause notice was that once the proceedings initiated by

the previous show cause notice for holding the petitioners liable for contravention of Rules 96K(3)(a) and 198 (1) had terminated in favour of the

petitioners as a result of the order of the Central Board of Revenue, it was not open to the first respondent to issue a fresh show cause notice

seeking to hold the petitioner liable for the same offences on the same facts. The argument of the petitioners was that the order of the Central

Board of Revenue did not contain a direction remanding the matter to the second respondent, or authorizing the second respondent to make a de

novo inquiry and, therefore no fresh inquiry into the same offences on the same facts could be held by the first or the second respondent. The

argument was sought to be supported by reference to a decision of a Division Bench of the Madras High Court in Collector of Central Excise v.

Pallappa AIR 1964 Mad 3. Now this decision of the Madras High Court does undoubtedly support the argument of the petitioners but for reasons which we shall immediately proceed to state, it does not commend itself to us and we find ourselves unable to accept it as laying down the correct

law. We will for the purpose of the present argument assume, with the petitioners as held in this decision that unless the order of the Central Board

of Revenue contains a direction for remand or de novo inquiry, the second respondent could not proceed to hold an inquiry into the same charges,

but the question is whether it could be said on a true construction of the order of the Central Board of Revenue that it does not contain any

direction for remand or de novo inquiry. It is undoubtedly true that there is no express direction for remand or de novo inquiry but that is not

decisive of the question. The direction need not be express : it can even be implied and if on a fair and reasonable construction it is clear that a

remand or a de novo inquiry was clearly intended by the Central Board of Revenue, such intention should not be allowed to be defeated by the

absence of express words. We must look to the substance of the order and not the mere form of it and see whether the intention that there should

be a remand or a denovo inquiry is sufficiently expressed on a fair and reasonable reading of the order. The question which we must ask ourselves

is : did the Central Board of Revenue vacate the order of the second respondent with a view to putting an end to the proceeding or did it intend

that the proceeding should remain alive and be disposed of on merits either on remand or by a de novo inquiry ? If we approach the construction

of the order of the Central Board of Revenue from this point of view, there is no difficulty in coming to the conclusion that it was clearly intended

by the order that the proceedings should not stand finally terminated but that the merits of the charges against the petitioners should be inquired into

and decided.

4. The words ""without prejudice to the merits of the case"" are of the utmost importance in this connection and they indicate clearly and indubitably

that the proceedings should not stand finally disposed of but that there should be a remand or de novo inquiry for the purpose of determining the

charges against the petitioners on merits. There were several contentions urged on behalf of the petitioners in support of the appeal before the

Central Board of Revenue but out of those contentions there was one which was of a preliminary nature and that contention was that the second respondent in making the order impugned in the appeal had failed to comply with the rules of natural justice. The Central Board of Revenue found

force in this contention and, therefore, without going into the merits of the other contentions vacated the order passed by the second respondent

but it made it clear that the order of the second respondent shall be vacated ""without prejudice to the merits of the case"".

5. The argument of the petitioners was that the words ""without prejudice to the merits of the case"" were meant to indicate only that the Central

Board of Revenue was not going into the merits of the case but was deciding the appeal only on a preliminary contention. This argument does

undoubtedly find support from the decision of the Madras High Court in Collector of Central Excise v. Pallappa (supra) but we do not think it is

well-founded. It is clear on the face of the order that the Central Board of Revenue was disposing of the appeal only on a preliminary contention

and it was not at all necessary for the Central Board of Revenue to say that it was not going into the merits of the case. But even if the Central

Board of Revenue thought it necessary to point out specifically that was deciding the appeal only on a preliminary contention and was not going

into the merits of the case, it could have used appropriate language to express what it wanted to say. It could have used some such words as

without going into the merits of the case"" or ""it is not necessary to go into the merits of the case"" which would have been more appropriate. But

instead, it used the words ""without prejudice to the merits of the case"". We must give proper meaning to the words used in the order and we

cannot proceed on the assumption that the Central Board of Revenue did not understand the meaning of the words which it was using. The words

without prejudice to the merits of the case"" clearly postulate that the Central Board of Revenue contemplated that the merits of the case were

going to be inquired into and the Central Board of Revenue did not want the merits of the case to be prejudiced by the order which it was making.

If nothing had been said by the Central Board of Revenue the order of the Central Board of Revenue vacating the order passed by the second

respondent would have prejudiced the merits of the case since it would have had the effect of finally terminating the proceedings in favour of the

petitioners. This was exactly what the Central Board of Revenue wanted to avoid and that is why the Central Board of Revenue added the words without prejudice to the merits of the case."" The merits of the case were saved in express terms and this was obviously done in order that the

second respondent should be able to inquire into and determine the charges against the petitioners on the merits. These words can lend themselves

to one and only interpretation, namely that the Central Board of Revenue did not intend to finally put an end to the proceeding against the

petitioners but intended to keep the proceedings alive for the purpose of investigating into the merits of the case and the entire case on merits was,

therefore, left open and unaffected. If the order was intended to finally terminate the proceedings and nothing further remaining to be done, there

was no point in making an express provision saying the merits of the case. We are of the view that on a fair and reasonable construction of the

order, the intention of the Central Board of Revenue was clear that the proceedings should remain alive against the petitioners and that the merits of

the case should be inquired into and determined. The order passed by the Central Board of Revenue cannot, therefore, be read as precluding an

inquiry into the merits of the charges against the petitioners.

6. It was also urged on behalf of the respondents that, in any view of the matter, the order of the Central Board of Revenue did not debar the

respondents from holding an inquiry into the charges against the petitioners since the order of the second respondent which was impugned in

appeal before the Central Board of Revenue was null and void by reason of non-compliance with the rules of natural justice and the order of the

Central Board of Revenue in appeal merely vacated the order of the second respondent as null and void and there was accordingly no final order

disposing of the proceedings in favour of the petitioners. But it is not necessary to examine the validity of this contention, since we have already

held in favour of the respondents on the first contention. We do not, therefore, propose to deal with this contention.

7. The result, therefore, is that the petition fails and the rule is discharged. There will be no order as to costs of the petition.