(1998) 04 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 3571 of 1998 and W.M.P. No''s. 5358 to 5360 of 1998

Y.V.S. Trading Company APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 21-04-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 102 ELT 245

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : R. Thiagarajan for V.R. Gopalan, for the Appellant; K. Jayachandran, A.C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to detention order dated 20-1-1998 and quash the same as one without jurisdiction and per se illegal and consequently restrain and forbear the respondents, their officials and sub-ordinates from in any way interfering with the petitioner carrying on business in marketing and selling "Gopuram" brand turmeric powder.

2. In the affidavit, which is sworn to by a partner of the petitioner-firm, it is stated that the petitioner-firm is carrying on business in turmeric, kumkum and other allied products intended for pooja and religious purposes. The petitioner firm had taken royalty and user of the trade mark "GOPURAM" from its sister concern. It is said that the firm is marketing turmeric Powder under brand name "Gopuram turmeric powder". The firm used to purchase good quality of turmeric from its originating places. Turmeric is grounded and powdered and is marketed in its pure form and the petitioner do not add or mix with any other components or ingredients and the turmeric powder as such is sold. The powdered turmeric retains its name, character and use as turmeric in full from the beginning to the end. The end product as well as the raw materials are one and the same and

retains its same character throughout. It is nothing but quality turmeric procured, dried and pulverised. It is therefore said that powdering of turmeric will not amount to manufacture and consequently will not attract the provisions of the Central Excise Act. It is also said that it does not fall under the category "Cosmetic and toilet requisite", nor it is used for beautifying face or body. It is confined to women for the purpose of poojas, hawans, religious activities, festivals and kumkum and vibudhi are already exempted from the Central Excise Duty. Turmeric powder comes under the same category and there cannot be a different thinking at all.

3. It is further said that at the most turmeric being a spice, could be classified in Chapter IX of Central Excise Tariff under the Heading 09.03 with duty being nil. It is also said that under the Spices Board Act, 1986, turmeric in any form is classified as a spice. Turmeric powder generally is also used as an edible item. It is further said that ''Gopuram Turmeric Powder'' has been described as ''Poosu Majal Thool'' only for advertisement purposes. The term ''poosu'' does not mean that it is only to be applied by ladies, but it is used extensively for the poojas, havans, festivals, etc.

4. The reason for filing this writ petition is that the Assistant Director, Anti-Evasion, DRI of the Central Excise Department, inspected the office of the petitioner-firm on 29-1-1998. Treating the turmeric powder as ''bath preparation'', attracting excise duty, they compelled the petitioner to pay a sum of Rs. 6 lakhs immediately. Apprehending arrest and undesirable happenings, a cheque for Rs. 6 lakhs was handed over to the department. It is also said that various involuntary statements have been retained from the deponent''s husband and he was asked to appear before the office of the 2nd respondent on 31-1-1998.

5. In the mean while the 2nd respondent also issued a detention order on 29-1-1998, for the items referred in paragraph 17 of the affidavit. Thereafter, the petitioner-firm also paid another sum of Rs. 19 lakhs. It is also said that on 6-3-1998, the officials of the 1st respondent came to the petitioner-firm and compelled the petitioner to record the payment of Rs. 25 lakhs in the personal ledger account towards alleged arrears for the period April 1993 to January 1998, classifying our product under the Tariff Heading 3307.39 of Chapter 33, which relates to cosmetics and bath preparations. It is stated that the said statement is illegal. According to the petitioner the subject matter did not satisfy the definition of ''goods'' attracting duty under Central Excise Act, nor there is ''manufacture''. The action of the respondents, according to the petitioner is one without jurisdiction. In the affidavit filed in support of the writ petition, they have referred to various decisions of the Hon''ble Supreme Court and various High Courts to contend that turmeric and turmeric powder are one and the same, and there is no manufacture, and therefore, not liable for excise duty. It is under the above circumstances, they have filed this writ petition.

6. A detailed counter-affidavit has been filed by the respondents. According to

them, the writ petition itself is not maintainable at this stage, when the matter is pending consideration by the authorities, and the Court should not interfere at this stage. It is further said that the petitioner has got other effective and alternative remedy and only after exhausting the statutory remedies, the petitioner can resort the interference of this Court under Article 226 of the Constitution of India. It is also said that the Goods that are taken custody on 29-1-1998 are excisable goods. It is clearly indicated in the containers of the goods as ''non-edible''. It is intended as a cosmetic or toilet preparations. The allegation that the petitioner and her husband were compelled to pay Rs. 25 lakhs is false. It is also said that the petitioners themselves advertised the goods as a beauty or toilet preparation. The goods that are sold in the container are manufactured item, and it is a different and distinguished product from the detaining raw-material. It is therefore, an excisable goods and at any rate, the writ petition at this stage is not maintainable.

7. Learned Counsel for the petitioner brought to my notice the definitions of ''goods'', ''Manufacture'' and also the charging section, under the Central Excise Act, and contended that in preparing turmeric powder, there is no manufacture and the same is a goods not liable for duty, and therefore, the action of the respondents is one without jurisdiction. Counsel also relied on various decisions and he has also filed a typed-set of papers.

8. The writ petition is filed challenging the order dated 29-1-1998. On 29-1-1998, a mahazar was prepared before detained the subject items, and thereafter receipt has also been given to the petitioner. The items referred to in the writ petition are detained by the authorities. According to me, the writ petition, at this stage is pre-mature, when the matter is under consideration of the authorities. The question whether turmeric and turmeric powder are different form and where there is any change, consequent on the powdering of turmeric are matters, which require consideration by the authorities and final orders are to be passed.

9. Much reliance was placed by learned Counsel for the petitioner on the decision of the Calcutta High Court, reported in 1982 S.T.C. 248 (Rasoi Products and Anr. v. Commercial Tax Officer, Shyambazar and Ors.). Learned Counsel submitted that in view of the decision, turmeric powder by change of form itself would not become an excisable goods and the act of the respondent is one without jurisdiction. Learned Counsel also brought to my notice the various other decisions, wherein their Lordships have considered what is meant by ''manufacture'' and what is meant by ''excisable goods'' etc. The decision of the Calcutta High Court was stressed for the reason that the subject matter of that case was also turmeric powder. Counsel relied on page 251 of the reports, wherein I find the following statement :-

"By simply powdering the turmeric and black pepper and/or white pepper the original commercial identity and/or characteristics of the commodity are not changed. In fact it is a matter of common knowledge that when the turmeric is purchased it is usually powdered or pasted for the purpose of daily use."

I do not think that this is a finding of the learned Judge. It is an argument of the Counsel for the petitioner before the Calcutta High Court. That is a case, where the petitioners therein were assessed to sales-tax under Bengal Sales-Tax Act. In so far as these items are concerned, an exemption was granted originally. Twelve years after the assessment was over, the same was sought to be reviewed by the authorities. It was under those circumstances, the matter came up before the Calcutta High Court. I do not think that the question before this Court was the matter in issue before Calcutta High Court and again the question that came up before consideration was at the stage when final orders have already been passed and the same was sought to be reviewed. At page 256 of the reports, the learned Judge held thus :-

"There is no evidence on record whatsoever that the petitioners were either importers of the notified commodities in the State of West Bengal or that the petitioners had manufactured, made or processed the notified commodities. By adopting the method of powdering the whole turmeric which has been purchased by the petitioners in West Bengal, the petitioners do not manufacture, make or process the different commodities. In substance, after the same had been powdered, the entire materials remains the same, only the form is changed."

So in the factual finding, the learned Judge held that there is no manufacture, and the question was under the Sales-tax Act and not under the Central Excise Act.

10. Reliance was also placed on the decision reported in 1994 (70) E.L.T. 501 (S.C.) [Krishna Chander Dutta (Spice) Pvt. Ltd. v. Commercial Tax Officer]. According to the Counsel, the said decision also holds that turmeric and turmeric powder are one and the same and there is no manufacture as alleged by the respondent. I do not think that the said decision also holds that view. Paragraphs 7 & 8 of the Judgment, make the point clear. In that case, the argument was that pepper and pepper powder and turmeric and turmeric powder are to be classified as the same. Regarding pepper and pepper powder, their Lordships held that the argument of the Counsel could be accepted. But in paragraph 8 of the Judgment, their Lordships further said that in so far as turmeric and turmeric powder are concerned, the position is not identical, applying the functional test. It is also clear that pursuant to the notification the turmeric and turmeric powder are treated as the same goods. In this case, that is a disputed question of fact. It is sold in a container and says it is not edible. It is also advertised as Toosu Manjal Thool''. Unless and until these questions are finally decided, by the authorities, I do not think, at this stage this Court should interfere under Article 226 of the Constitution. It has also been held by the Hon''ble Supreme Court that regarding classification of goods, the revenue authorities are in better position in appreciating the same, and the Courts ought not to have interfered in writ petition on such issue and the Hon''ble Supreme Court has further held that the parties should put their grievances before the statutory authorities and place

sufficient evidence before them. It was so held in the decision reported in 1997 (81) E.L.T. 7 (S.C.) (Asstt. Commissioner of Sales Tax, Kerala v. P. Kesavan & Co).

11. Following the above decision and also taking into consideration the disputed questions of fact, which are yet to be decided finally by the authorities, I held that the writ petition at this stage in pre-mature, and consequently, the same is dismissed. The connected W.M.Ps., are also dismissed.